

By Senator Gainer

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1 A bill to be entitled
2 An act relating to voting systems; amending s. 97.021,
3 F.S.; defining the term "automatic tabulating
4 equipment" for purposes of the Florida Election Code;
5 amending s. 101.5614, F.S.; revising procedures
6 governing the canvassing of returns to specify usage
7 of a voting system's automatic tabulating equipment;
8 amending s. 102.141, F.S.; clarifying the
9 circumstances under which ballots must be processed
10 through automatic tabulating equipment in a recount;
11 amending s. 102.166, F.S.; specifying the manner by
12 which a manual recount may be conducted; revising
13 requirements for hardware or software used in a manual
14 recount; authorizing overvotes and undervotes to be
15 identified and sorted physically or digitally in a
16 manual recount; revising minimum requirements for
17 Department of State rules to require procedures
18 regarding the certification and use of automatic
19 tabulating equipment for manual recounts; providing an
20 effective date.

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

23
24 Section 1. Present subsections (5) through (45) of section
25 97.021, Florida Statutes, are renumbered as subsections (6)
26 through (46), respectively, and a new subsection (5) is added to
27 that section, to read:

28 97.021 Definitions.—For the purposes of this code, except
29 where the context clearly indicates otherwise, the term:

30 (5) "Automatic tabulating equipment" means an apparatus
31 that automatically examines, counts, and records votes.

32 Section 2. Paragraph (a) of subsection (5) and subsections

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33 (7) and (8) of section 101.5614, Florida Statutes, are amended
34 to read:

35 101.5614 Canvass of returns.—

36 (5) (a) If any vote-by-mail ballot is physically damaged so
37 that it cannot properly be counted by the voting system's
38 automatic tabulating equipment, a true duplicate copy shall be
39 made of the damaged ballot in the presence of witnesses and
40 substituted for the damaged ballot. Likewise, a duplicate ballot
41 shall be made of a vote-by-mail ballot containing an overvoted
42 race or a marked vote-by-mail ballot in which every race is
43 undervoted which shall include all valid votes as determined by
44 the canvassing board based on rules adopted by the division
45 pursuant to s. 102.166(4). All duplicate ballots shall be
46 clearly labeled "duplicate," bear a serial number which shall be
47 recorded on the defective ballot, and be counted in lieu of the
48 defective ballot. After a ballot has been duplicated, the
49 defective ballot shall be placed in an envelope provided for
50 that purpose, and the duplicate ballot shall be tallied with the
51 other ballots for that precinct.

52 (7) Vote-by-mail ballots may be counted by the voting
53 system's automatic tabulating equipment if they have been marked
54 in a manner which will enable them to be properly counted by
55 such equipment.

56 (8) The return printed by the voting system's automatic
57 tabulating equipment, to which has been added the return of
58 write-in, vote-by-mail, and manually counted votes and votes
59 from provisional ballots, shall constitute the official return
60 of the election upon certification by the canvassing board. Upon
61 completion of the count, the returns shall be open to the

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62 public. A copy of the returns may be posted at the central
63 counting place or at the office of the supervisor of elections
64 in lieu of the posting of returns at individual precincts.

65 Section 3. Paragraph (a) of subsection (7) of section
66 102.141, Florida Statutes, is amended to read:

67 102.141 County canvassing board; duties.—

68 (7) If the unofficial returns reflect that a candidate for
69 any office was defeated or eliminated by one-half of a percent
70 or less of the votes cast for such office, that a candidate for
71 retention to a judicial office was retained or not retained by
72 one-half of a percent or less of the votes cast on the question
73 of retention, or that a measure appearing on the ballot was
74 approved or rejected by one-half of a percent or less of the
75 votes cast on such measure, a recount shall be ordered of the
76 votes cast with respect to such office or measure. The Secretary
77 of State is responsible for ordering recounts in federal, state,
78 and multicounty races. The county canvassing board or the local
79 board responsible for certifying the election is responsible for
80 ordering recounts in all other races. A recount need not be
81 ordered with respect to the returns for any office, however, if
82 the candidate or candidates defeated or eliminated from
83 contention for such office by one-half of a percent or less of
84 the votes cast for such office request in writing that a recount
85 not be made.

86 (a) Each canvassing board responsible for conducting a
87 recount shall put each marksense ballot through automatic
88 tabulating equipment and determine whether the returns correctly
89 reflect the votes cast. If any marksense ballot is physically
90 damaged so that it cannot be properly counted by the automatic

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91 tabulating equipment during the recount, a true duplicate shall
92 be made of the damaged ballot pursuant to the procedures in s.
93 101.5614(5). Immediately before the start of the recount, a test
94 of the tabulating equipment shall be conducted as provided in s.
95 101.5612. If the test indicates no error, the recount tabulation
96 of the ballots cast shall be presumed correct and such votes
97 shall be canvassed accordingly. If an error is detected, the
98 cause therefor shall be ascertained and corrected and the
99 recount repeated, as necessary. The canvassing board shall
100 immediately report the error, along with the cause of the error
101 and the corrective measures being taken, to the Department of
102 State. No later than 11 days after the election, the canvassing
103 board shall file a separate incident report with the Department
104 of State, detailing the resolution of the matter and identifying
105 any measures that will avoid a future recurrence of the error.
106 If the automatic tabulating equipment used in a recount is not
107 part of the voting system and the ballots have already been
108 processed through such equipment, the canvassing board is not
109 required to put each ballot through any automatic tabulating
110 equipment again.

111 Section 4. Subsections (1), (2), and (5) of section
112 102.166, Florida Statutes, are amended to read:

113 102.166 Manual recounts of overvotes and undervotes.—

114 (1) If the second set of unofficial returns pursuant to s.
115 102.141 indicates that a candidate for any office was defeated
116 or eliminated by one-quarter of a percent or less of the votes
117 cast for such office, that a candidate for retention to a
118 judicial office was retained or not retained by one-quarter of a
119 percent or less of the votes cast on the question of retention,

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120 or that a measure appearing on the ballot was approved or
121 rejected by one-quarter of a percent or less of the votes cast
122 on such measure, a manual recount of the overvotes and
123 undervotes cast in the entire geographic jurisdiction of such
124 office or ballot measure shall be ordered unless:

125 (a) The candidate or candidates defeated or eliminated from
126 contention by one-quarter of 1 percent or fewer of the votes
127 cast for such office request in writing that a recount not be
128 made; or

129 (b) The number of overvotes and undervotes is fewer than
130 the number of votes needed to change the outcome of the
131 election.

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133 The Secretary of State is responsible for ordering a manual
134 recount for federal, state, and multicounty races. The county
135 canvassing board or local board responsible for certifying the
136 election is responsible for ordering a manual recount for all
137 other races. A manual recount consists of a recount of marksense
138 ballots or of digital images of those ballots by a person.

139 (2) (a) Any hardware or software used to identify and sort
140 overvotes and undervotes for a given race or ballot measure must
141 be certified by the Department of State ~~as part of the voting~~
142 ~~system pursuant to s. 101.015.~~ Any such hardware or software
143 must be capable of simultaneously counting votes.

144 (b) Overvotes and undervotes shall be identified and sorted
145 while recounting ballots pursuant to s. 102.141, if the hardware
146 or software for this purpose has been certified or the
147 department's rules so provide. Overvotes and undervotes may be
148 identified and sorted physically or digitally.

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149 (5) Procedures for a manual recount are as follows:

150 (a) The county canvassing board shall appoint as many
151 counting teams of at least two electors as is necessary to
152 manually recount the ballots. A counting team must have, when
153 possible, members of at least two political parties. A candidate
154 involved in the race shall not be a member of the counting team.

155 (b) Each duplicate ballot prepared pursuant to s.
156 101.5614(5) or s. 102.141(7) shall be compared with the original
157 ballot to ensure the correctness of the duplicate.

158 (c) If a counting team is unable to determine whether the
159 ballot contains a clear indication that the voter has made a
160 definite choice, the ballot shall be presented to the county
161 canvassing board for a determination.

162 (d) The Department of State shall adopt detailed rules
163 prescribing additional recount procedures for each certified
164 voting system which shall be uniform to the extent practicable.
165 The rules shall address, at a minimum, the following areas:

166 1. Security of ballots during the recount process;

167 2. Time and place of recounts;

168 3. Public observance of recounts;

169 4. Objections to ballot determinations;

170 5. Record of recount proceedings; ~~and~~

171 6. Procedures relating to candidate and petitioner
172 representatives; and

173 7. Procedures relating to the certification, and the use
174 thereof, of automatic tabulating equipment that is not part of a
175 voting system.

176 Section 5. This act shall take effect July 1, 2017.