

By the Committee on Community Affairs; and Senator Baxley

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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 revising the definition of the term "marksense
6 ballots" for purposes of the Florida Election Code;
7 amending s. 101.151, F.S.; providing applicability of
8 specified ballot requirements to a voter interface
9 device; amending ss. 101.5603 and 101.56075, F.S.;
10 conforming provisions to changes made by the act;
11 amending s. 101.5614, F.S.; revising procedures
12 governing the canvassing of returns to specify usage
13 of a voting system's automatic tabulating equipment;
14 amending s. 102.141, F.S.; providing that ballots
15 processed through automatic tabulating equipment in a
16 recount do not need to be reprocessed in certain
17 circumstances; amending s. 102.166, F.S.; specifying
18 the manner by which a manual recount may be conducted;
19 revising requirements for hardware or software used in
20 a manual recount; authorizing overvotes and undervotes
21 to be identified and sorted physically or digitally in
22 a manual recount; revising minimum requirements for
23 Department of State rules to require procedures
24 regarding the certification and use of automatic
25 tabulating equipment for manual recounts; providing an
26 effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Present subsections (6) through (45) of section
31 97.021, Florida Statutes, are renumbered as subsections (7)
32 through (46), respectively, a new subsection (5) is added to
33 that section, and paragraph (a) of present subsection (5) of
34 that section is amended, to read:

35 97.021 Definitions.—For the purposes of this code, except
36 where the context clearly indicates otherwise, the term:

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

39 (6)-(5) "Ballot" or "official ballot" when used in reference
40 to:

41 (a) "Marksense ballots" means that printed sheet of paper,
42 used in conjunction with an electronic or electromechanical vote
43 tabulation voting system, containing the names of candidates, or
44 a statement of proposed constitutional amendments or other
45 questions or propositions submitted to the electorate at any
46 election, or the selections made by the elector of candidates or
47 other questions or propositions at an election, on which sheet
48 of paper an elector casts his or her vote either directly on a
49 sheet of paper or indirectly through the use of a voter
50 interface device used to designate the elector's ballot
51 selections on the sheet of paper.

52 Section 2. Subsection (10) is added to section 101.151,
53 Florida Statutes, to read:

54 101.151 Specifications for ballots.—

55 (10) With respect to any voting system that uses a voter
56 interface device to designate the elector's ballot selections on
57 a sheet of paper, the provisions of this section, s. 101.161,
58 and ss. 101.2512-101.254 that prescribe the ballot layout apply

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59 only to the display of candidates and issues on the voter
60 interface device.

61 Section 3. Subsection (5) of section 101.5603, Florida
62 Statutes, is amended to read:

63 101.5603 Definitions relating to Electronic Voting Systems
64 Act.—As used in this act, the term:

65 (5) "Marking device" means any approved device for marking
66 a ballot with ink or other substance, including through a voter
67 interface device, which will enable the ballot to be tabulated
68 by means of automatic tabulating equipment.

69 Section 4. Subsection (1) of section 101.56075, Florida
70 Statutes, is amended to read:

71 101.56075 Voting methods.—

72 (1) Except as provided in subsection (2), all voting shall
73 be by marksense ballot using ~~utilizing~~ a marking device for the
74 purpose of designating ballot selections.

75 Section 5. Paragraph (a) of subsection (5) and subsections
76 (7) and (8) of section 101.5614, Florida Statutes, are amended
77 to read:

78 101.5614 Canvass of returns.—

79 (5) (a) If any vote-by-mail ballot is physically damaged so
80 that it cannot properly be counted by the voting system's
81 automatic tabulating equipment, a true duplicate copy shall be
82 made of the damaged ballot in the presence of witnesses and
83 substituted for the damaged ballot. Likewise, a duplicate ballot
84 shall be made of a vote-by-mail ballot containing an overvoted
85 race or a marked vote-by-mail ballot in which every race is
86 undervoted which shall include all valid votes as determined by
87 the canvassing board based on rules adopted by the division

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88 pursuant to s. 102.166(4). All duplicate ballots shall be
89 clearly labeled "duplicate," bear a serial number which shall be
90 recorded on the defective ballot, and be counted in lieu of the
91 defective ballot. After a ballot has been duplicated, the
92 defective ballot shall be placed in an envelope provided for
93 that purpose, and the duplicate ballot shall be tallied with the
94 other ballots for that precinct.

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

99 (8) The return printed by the voting system's automatic
100 tabulating equipment, to which has been added the return of
101 write-in, vote-by-mail, and manually counted votes and votes
102 from provisional ballots, shall constitute the official return
103 of the election upon certification by the canvassing board. Upon
104 completion of the count, the returns shall be open to the
105 public. A copy of the returns may be posted at the central
106 counting place or at the office of the supervisor of elections
107 in lieu of the posting of returns at individual precincts.

108 Section 6. Paragraph (a) of subsection (7) of section
109 102.141, Florida Statutes, is amended to read:

110 102.141 County canvassing board; duties.—

111 (7) If the unofficial returns reflect that a candidate for
112 any office was defeated or eliminated by one-half of a percent
113 or less of the votes cast for such office, that a candidate for
114 retention to a judicial office was retained or not retained by
115 one-half of a percent or less of the votes cast on the question
116 of retention, or that a measure appearing on the ballot was

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117 approved or rejected by one-half of a percent or less of the
118 votes cast on such measure, a recount shall be ordered of the
119 votes cast with respect to such office or measure. The Secretary
120 of State is responsible for ordering recounts in federal, state,
121 and multicounty races. The county canvassing board or the local
122 board responsible for certifying the election is responsible for
123 ordering recounts in all other races. A recount need not be
124 ordered with respect to the returns for any office, however, if
125 the candidate or candidates defeated or eliminated from
126 contention for such office by one-half of a percent or less of
127 the votes cast for such office request in writing that a recount
128 not be made.

129 (a) Each canvassing board responsible for conducting a
130 recount shall put each marksense ballot through automatic
131 tabulating equipment and determine whether the returns correctly
132 reflect the votes cast. If any marksense ballot is physically
133 damaged so that it cannot be properly counted by the automatic
134 tabulating equipment during the recount, a true duplicate shall
135 be made of the damaged ballot pursuant to the procedures in s.
136 101.5614(5). Immediately before the start of the recount, a test
137 of the tabulating equipment shall be conducted as provided in s.
138 101.5612. If the test indicates no error, the recount tabulation
139 of the ballots cast shall be presumed correct and such votes
140 shall be canvassed accordingly. If an error is detected, the
141 cause therefor shall be ascertained and corrected and the
142 recount repeated, as necessary. The canvassing board shall
143 immediately report the error, along with the cause of the error
144 and the corrective measures being taken, to the Department of
145 State. No later than 11 days after the election, the canvassing

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146 board shall file a separate incident report with the Department
147 of State, detailing the resolution of the matter and identifying
148 any measures that will avoid a future recurrence of the error.
149 If the automatic tabulating equipment used in a recount is not
150 part of the voting system and the ballots have already been
151 processed through such equipment, the canvassing board is not
152 required to put each ballot through any automatic tabulating
153 equipment again.

154 Section 7. Subsections (1) and (2) and paragraph (d) of
155 subsection (5) of section 102.166, Florida Statutes, are amended
156 to read:

157 102.166 Manual recounts of overvotes and undervotes.—

158 (1) If the second set of unofficial returns pursuant to s.
159 102.141 indicates that a candidate for any office was defeated
160 or eliminated by one-quarter of a percent or less of the votes
161 cast for such office, that a candidate for retention to a
162 judicial office was retained or not retained by one-quarter of a
163 percent or less of the votes cast on the question of retention,
164 or that a measure appearing on the ballot was approved or
165 rejected by one-quarter of a percent or less of the votes cast
166 on such measure, a manual recount of the overvotes and
167 undervotes cast in the entire geographic jurisdiction of such
168 office or ballot measure shall be ordered unless:

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

173 (b) The number of overvotes and undervotes is fewer than
174 the number of votes needed to change the outcome of the

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175 election.

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177 The Secretary of State is responsible for ordering a manual
178 recount for federal, state, and multicounty races. The county
179 canvassing board or local board responsible for certifying the
180 election is responsible for ordering a manual recount for all
181 other races. A manual recount consists of a recount of marksense
182 ballots or of digital images of those ballots by a person.

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

188 (b) Overvotes and undervotes shall be identified and sorted
189 while recounting ballots pursuant to s. 102.141, if the hardware
190 or software for this purpose has been certified or the
191 department's rules so provide. Overvotes and undervotes may be
192 identified and sorted physically or digitally.

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

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

- 198 1. Security of ballots during the recount process;
- 199 2. Time and place of recounts;
- 200 3. Public observance of recounts;
- 201 4. Objections to ballot determinations;
- 202 5. Record of recount proceedings; ~~and~~
- 203 6. Procedures relating to candidate and petitioner

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204 representatives; and

205 7. Procedures relating to the certification and the use of
206 automatic tabulating equipment that is not part of a voting
207 system.

208 Section 8. This act shall take effect on January 1, 2019.