

ENROLLED

CS/HB 1005

2020 Legislature

1
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. 101.5612, F.S.; revising the timeframes
6 for certain public testing of automatic tabulating
7 equipment; amending s. 101.5614, F.S.; revising
8 procedures governing the canvassing of returns to
9 specify usage of a voting system's automatic
10 tabulating equipment; amending s. 102.141, F.S.;
11 specifying the circumstances under which ballots must
12 be processed through automatic tabulating equipment in
13 a recount; amending s. 102.166, F.S.; specifying the
14 manner by which a manual recount may be conducted;
15 revising requirements for hardware or software used in
16 a manual recount; authorizing overvotes and undervotes
17 to be identified and sorted physically or digitally in
18 a manual recount; revising minimum requirements for
19 Department of State rules to require procedures
20 regarding the certification and use of automatic
21 tabulating equipment for manual recounts; providing
22 construction; providing effective dates.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

ENROLLED

CS/HB 1005

2020 Legislature

26 Section 1. Present subsections (5) through (46) of section
 27 97.021, Florida Statutes, are renumbered as subsections (6)
 28 through (47), respectively, and a new subsection (5) is added to
 29 that section, to read:

30 97.021 Definitions.—For the purposes of this code, except
 31 where the context clearly indicates otherwise, the term:

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

34 Section 2. Effective upon becoming a law, subsection (2)
 35 of section 101.5612, Florida Statutes, is amended to read:

36 101.5612 Testing of tabulating equipment.—

37 (2) On any day not more than 25 ~~10~~ days before ~~prior to~~
 38 the commencement of early voting as provided in s. 101.657, the
 39 supervisor of elections shall have the automatic tabulating
 40 equipment publicly tested to ascertain that the equipment will
 41 correctly count the votes cast for all offices and on all
 42 measures. If the ballots to be used at the polling place on
 43 election day are not available at the time of the testing, the
 44 supervisor may conduct an additional test not more than 10 days
 45 before election day. Public notice of the time and place of the
 46 test shall be given at least 48 hours prior thereto by
 47 publication on the supervisor of elections' website and once in
 48 one or more newspapers of general circulation in the county or,
 49 if there is no newspaper of general circulation in the county,
 50 by posting the notice in at least four conspicuous places in the

ENROLLED

CS/HB 1005

2020 Legislature

51 county. The supervisor or the municipal elections official may,
52 at the time of qualifying, give written notice of the time and
53 location of the public preelection test to each candidate
54 qualifying with that office and obtain a signed receipt that the
55 notice has been given. The Department of State shall give
56 written notice to each statewide candidate at the time of
57 qualifying, or immediately at the end of qualifying, that the
58 voting equipment will be tested and advise each candidate to
59 contact the county supervisor of elections as to the time and
60 location of the public preelection test. The supervisor or the
61 municipal elections official shall, at least 30 ~~45~~ days before
62 ~~prior to~~ the commencement of early voting as provided in s.
63 101.657, send written notice by certified mail to the county
64 party chair of each political party and to all candidates for
65 other than statewide office whose names appear on the ballot in
66 the county and who did not receive written notification from the
67 supervisor or municipal elections official at the time of
68 qualifying, stating the time and location of the public
69 preelection test of the automatic tabulating equipment. The
70 canvassing board shall convene, and each member of the
71 canvassing board shall certify to the accuracy of the test. For
72 the test, the canvassing board may designate one member to
73 represent it. The test shall be open to representatives of the
74 political parties, the press, and the public. Each political
75 party may designate one person with expertise in the computer

ENROLLED

CS/HB 1005

2020 Legislature

76 | field who shall be allowed in the central counting room when all
77 | tests are being conducted and when the official votes are being
78 | counted. The designee shall not interfere with the normal
79 | operation of the canvassing board.

80 | Section 3. Paragraph (a) of subsection (4) and subsections
81 | (6) and (7) of section 101.5614, Florida Statutes, are amended
82 | to read:

83 | 101.5614 Canvass of returns.—

84 | (4) (a) If any vote-by-mail ballot is physically damaged so
85 | that it cannot properly be counted by the voting system's
86 | automatic tabulating equipment, a true duplicate copy shall be
87 | made of the damaged ballot in the presence of witnesses and
88 | substituted for the damaged ballot. Likewise, a duplicate ballot
89 | shall be made of a vote-by-mail ballot containing an overvoted
90 | race or a marked vote-by-mail ballot in which every race is
91 | undervoted which shall include all valid votes as determined by
92 | the canvassing board based on rules adopted by the division
93 | pursuant to s. 102.166(4). Upon request, a physically present
94 | candidate, a political party official, a political committee
95 | official, or an authorized designee thereof, must be allowed to
96 | observe the duplication of ballots. All duplicate ballots shall
97 | be clearly labeled "duplicate," bear a serial number which shall
98 | be recorded on the defective ballot, and be counted in lieu of
99 | the defective ballot. After a ballot has been duplicated, the
100 | defective ballot shall be placed in an envelope provided for

ENROLLED

CS/HB 1005

2020 Legislature

101 that purpose, and the duplicate ballot shall be tallied with the
102 other ballots for that precinct.

103 (6) Vote-by-mail ballots may be counted by the voting
104 system's automatic tabulating equipment if they have been marked
105 in a manner which will enable them to be properly counted by
106 such equipment.

107 (7) The return printed by the voting system's automatic
108 tabulating equipment, to which has been added the return of
109 write-in, vote-by-mail, and manually counted votes and votes
110 from provisional ballots, shall constitute the official return
111 of the election upon certification by the canvassing board. Upon
112 completion of the count, the returns shall be open to the
113 public. A copy of the returns may be posted at the central
114 counting place or at the office of the supervisor of elections
115 in lieu of the posting of returns at individual precincts.

116 Section 4. Paragraph (a) of subsection (7) of section
117 102.141, Florida Statutes, is amended to read:

118 102.141 County canvassing board; duties.—

119 (7) If the unofficial returns reflect that a candidate for
120 any office was defeated or eliminated by one-half of a percent
121 or less of the votes cast for such office, that a candidate for
122 retention to a judicial office was retained or not retained by
123 one-half of a percent or less of the votes cast on the question
124 of retention, or that a measure appearing on the ballot was
125 approved or rejected by one-half of a percent or less of the

ENROLLED

CS/HB 1005

2020 Legislature

126 | votes cast on such measure, a recount shall be ordered of the
127 | votes cast with respect to such office or measure. The Secretary
128 | of State is responsible for ordering recounts in federal, state,
129 | and multicounty races. The county canvassing board or the local
130 | board responsible for certifying the election is responsible for
131 | ordering recounts in all other races. A recount need not be
132 | ordered with respect to the returns for any office, however, if
133 | the candidate or candidates defeated or eliminated from
134 | contention for such office by one-half of a percent or less of
135 | the votes cast for such office request in writing that a recount
136 | not be made.

137 | (a) Each canvassing board responsible for conducting a
138 | recount shall put each marksense ballot through automatic
139 | tabulating equipment and determine whether the returns correctly
140 | reflect the votes cast. If any marksense ballot is physically
141 | damaged so that it cannot be properly counted by the automatic
142 | tabulating equipment during the recount, a true duplicate shall
143 | be made of the damaged ballot pursuant to the procedures in s.
144 | 101.5614(4). Immediately before the start of the recount, a test
145 | of the tabulating equipment shall be conducted as provided in s.
146 | 101.5612. If the test indicates no error, the recount tabulation
147 | of the ballots cast shall be presumed correct and such votes
148 | shall be canvassed accordingly. If an error is detected, the
149 | cause therefor shall be ascertained and corrected and the
150 | recount repeated, as necessary. The canvassing board shall

ENROLLED

CS/HB 1005

2020 Legislature

151 immediately report the error, along with the cause of the error
 152 and the corrective measures being taken, to the Department of
 153 State. No later than 11 days after the election, the canvassing
 154 board shall file a separate incident report with the Department
 155 of State, detailing the resolution of the matter and identifying
 156 any measures that will avoid a future recurrence of the error.
 157 If the automatic tabulating equipment used in a recount is not
 158 part of the voting system and the ballots have already been
 159 processed through such equipment, the canvassing board is not
 160 required to put each ballot through any automatic tabulating
 161 equipment again.

162 Section 5. Subsections (1), (2), and (5) of section
 163 102.166, Florida Statutes, are amended, and subsection (6) is
 164 added to that section, to read:

165 102.166 Manual recounts of overvotes and undervotes.—

166 (1) If the second set of unofficial returns pursuant to s.
 167 102.141 indicates that a candidate for any office was defeated
 168 or eliminated by one-quarter of a percent or less of the votes
 169 cast for such office, that a candidate for retention to a
 170 judicial office was retained or not retained by one-quarter of a
 171 percent or less of the votes cast on the question of retention,
 172 or that a measure appearing on the ballot was approved or
 173 rejected by one-quarter of a percent or less of the votes cast
 174 on such measure, a manual recount of the overvotes and
 175 undervotes cast in the entire geographic jurisdiction of such

ENROLLED

CS/HB 1005

2020 Legislature

176 office or ballot measure shall be ordered unless:

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

181 (b) The number of overvotes and undervotes is fewer than
 182 the number of votes needed to change the outcome of the
 183 election.

184

185 The Secretary of State is responsible for ordering a manual
 186 recount for federal, state, and multicounty races. The county
 187 canvassing board or local board responsible for certifying the
 188 election is responsible for ordering a manual recount for all
 189 other races. A manual recount consists of a recount of marksense
 190 ballots or of digital images of those ballots by a person.

191 (2) Any hardware or software used to identify and sort
 192 overvotes and undervotes for a given race or ballot measure must
 193 be certified by the Department of State ~~as part of the voting~~
 194 ~~system pursuant to s. 101.015.~~ Any such hardware or software
 195 must be capable of simultaneously identifying and sorting
 196 overvotes and undervotes in multiple races while simultaneously
 197 counting votes. Overvotes and undervotes must be identified and
 198 sorted while recounting ballots pursuant to s. 102.141.
 199 Overvotes and undervotes may be identified and sorted physically
 200 or digitally.

ENROLLED

CS/HB 1005

2020 Legislature

201 (5) Procedures for a manual recount are as follows:
 202 (a) The county canvassing board shall appoint as many
 203 counting teams of at least two electors as is necessary to
 204 manually recount the ballots. A counting team must have, when
 205 possible, members of at least two political parties. A candidate
 206 involved in the race shall not be a member of the counting team.
 207 (b) Each duplicate ballot prepared pursuant to s.
 208 101.5614(4) or s. 102.141(7) shall be compared with the original
 209 ballot to ensure the correctness of the duplicate.
 210 (c) If a counting team is unable to determine whether the
 211 ballot contains a clear indication that the voter has made a
 212 definite choice, the ballot shall be presented to the county
 213 canvassing board for a determination.
 214 (d) The Department of State shall adopt detailed rules
 215 prescribing additional recount procedures for each certified
 216 voting system which shall be uniform to the extent practicable.
 217 The rules shall address, at a minimum, the following areas:
 218 1. Security of ballots during the recount process;
 219 2. Time and place of recounts;
 220 3. Public observance of recounts;
 221 4. Objections to ballot determinations;
 222 5. Record of recount proceedings; ~~and~~
 223 6. Procedures relating to candidate and petitioner
 224 representatives; and
 225 7. Procedures relating to the certification and the use of

ENROLLED

CS/HB 1005

2020 Legislature

226 | automatic tabulating equipment that is not part of a voting
227 | system.

228 | (6) Nothing in this section precludes a county canvassing
229 | board or local board involved in the recount from comparing a
230 | digital image of a ballot to the corresponding physical paper
231 | ballot during a manual recount.

232 | Section 6. Except as otherwise expressly provided in this
233 | act and except for this section, which shall take effect upon
234 | becoming a law, this act shall take effect January 1, 2021.