

By Senator Montford

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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.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Present subsections (5) through (46) of section
25 97.021, Florida Statutes, are renumbered as subsections (6)
26 through (47), 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:

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

32 Section 2. Paragraph (a) of subsection (4) and subsections
33 (6) and (7) of section 101.5614, Florida Statutes, are amended
34 to read:

35 101.5614 Canvass of returns.—

36 (4) (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). Upon request, a physically present
46 candidate, a political party official, a political committee
47 official, or an authorized designee thereof, must be allowed to
48 observe the duplication of ballots. All duplicate ballots shall
49 be clearly labeled "duplicate," bear a serial number which shall
50 be recorded on the defective ballot, and be counted in lieu of
51 the defective ballot. After a ballot has been duplicated, the
52 defective ballot shall be placed in an envelope provided for
53 that purpose, and the duplicate ballot shall be tallied with the
54 other ballots for that precinct.

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

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59 (7) The return printed by the voting system's automatic
60 tabulating equipment, to which has been added the return of
61 write-in, vote-by-mail, and manually counted votes and votes
62 from provisional ballots, shall constitute the official return
63 of the election upon certification by the canvassing board. Upon
64 completion of the count, the returns shall be open to the
65 public. A copy of the returns may be posted at the central
66 counting place or at the office of the supervisor of elections
67 in lieu of the posting of returns at individual precincts.

68 Section 3. Paragraph (a) of subsection (7) of section
69 102.141, Florida Statutes, is amended to read:

70 102.141 County canvassing board; duties.—

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

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88 not be made.

89 (a) Each canvassing board responsible for conducting a
90 recount shall put each marksense ballot through automatic
91 tabulating equipment and determine whether the returns correctly
92 reflect the votes cast. If any marksense ballot is physically
93 damaged so that it cannot be properly counted by the automatic
94 tabulating equipment during the recount, a true duplicate shall
95 be made of the damaged ballot pursuant to the procedures in s.
96 101.5614(4). Immediately before the start of the recount, a test
97 of the tabulating equipment shall be conducted as provided in s.
98 101.5612. If the test indicates no error, the recount tabulation
99 of the ballots cast shall be presumed correct and such votes
100 shall be canvassed accordingly. If an error is detected, the
101 cause therefor shall be ascertained and corrected and the
102 recount repeated, as necessary. The canvassing board shall
103 immediately report the error, along with the cause of the error
104 and the corrective measures being taken, to the Department of
105 State. No later than 11 days after the election, the canvassing
106 board shall file a separate incident report with the Department
107 of State, detailing the resolution of the matter and identifying
108 any measures that will avoid a future recurrence of the error.
109 If the automatic tabulating equipment used in a recount is not
110 part of the voting system and the ballots have already been
111 processed through such equipment, the canvassing board is not
112 required to put each ballot through any automatic tabulating
113 equipment again.

114 Section 4. Subsections (1), (2), and (5) of section
115 102.166, Florida Statutes, are amended to read:

116 102.166 Manual recounts of overvotes and undervotes.—

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117 (1) If the second set of unofficial returns pursuant to s.
118 102.141 indicates that a candidate for any office was defeated
119 or eliminated by one-quarter of a percent or less of the votes
120 cast for such office, that a candidate for retention to a
121 judicial office was retained or not retained by one-quarter of a
122 percent or less of the votes cast on the question of retention,
123 or that a measure appearing on the ballot was approved or
124 rejected by one-quarter of a percent or less of the votes cast
125 on such measure, a manual recount of the overvotes and
126 undervotes cast in the entire geographic jurisdiction of such
127 office or ballot measure shall be ordered unless:

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

132 (b) The number of overvotes and undervotes is fewer than
133 the number of votes needed to change the outcome of the
134 election.

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

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

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146 must be capable of simultaneously identifying and sorting
147 overvotes and undervotes in multiple races while simultaneously
148 counting votes. Overvotes and undervotes must be identified and
149 sorted while recounting ballots pursuant to s. 102.141.
150 Overvotes and undervotes may be identified and sorted physically
151 or digitally.

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

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

158 (b) Each duplicate ballot prepared pursuant to s.
159 101.5614(4) or s. 102.141(7) shall be compared with the original
160 ballot to ensure the correctness of the duplicate.

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

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

- 169 1. Security of ballots during the recount process;
- 170 2. Time and place of recounts;
- 171 3. Public observance of recounts;
- 172 4. Objections to ballot determinations;
- 173 5. Record of recount proceedings; ~~and~~
- 174 6. Procedures relating to candidate and petitioner

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175 representatives; and

176 7. Procedures relating to the certification and the use of
177 automatic tabulating equipment that is not part of a voting
178 system.

179 Section 5. This act shall take effect upon becoming a law.