

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

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

25
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:

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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) of
35 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~~ the
38 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
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

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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 ~~15~~ 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
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

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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
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

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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
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.

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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
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

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175 undervotes cast in the entire geographic jurisdiction of such
176 office or ballot measure shall be ordered unless:

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

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

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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
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

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233 act and except for this section, which shall take effect upon
234 becoming a law, this act shall take effect January 1, 2021.