

**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.