

House Bill No. 281

An act relating to election protests and contests; amending s. 102.166, F.S., relating to protests of election returns; revising provisions with respect to the timeframes for filing election protests and requests for manual recounts; eliminating protests of election returns in circuit court; amending s. 102.167, F.S.; deleting the provision that prescribes the form of the protest of election returns to circuit judge, to conform; amending s. 102.168, F.S., relating to election contests; revising the timeframe for filing a contest of election; specifying the grounds authorized for contesting an election; specifying conditions under which a statement of the grounds of contest may not be rejected or dismissed for want of form; providing for service of the complaint upon the defendant and any other person named therein and providing a timeframe for filing an answer or response thereto; specifying that the contestant is entitled to an immediate hearing; authorizing the circuit judge to fashion any orders necessary to investigate, examine, or check each allegation, prevent or correct any wrong, and provide any relief appropriate under the circumstances; creating s. 102.171, F.S.; codifying that jurisdiction to hear a contest of the election of a member to either house of the Legislature is vested in the applicable house in accordance with its rules; providing applicability to certain primary elections; providing an effective date.

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

Section 1. Section 102.166, Florida Statutes, is amended to read:

102.166 Protest of election returns; procedure; ~~venue~~.—

(1) Any candidate for nomination or election, or any elector qualified to vote in the election related to such candidacy, shall have the right to protest the returns of the election as being erroneous by filing with the appropriate canvassing board a sworn, written protest.

(2) Such protest shall be filed with the canvassing board prior to the time the canvassing board certifies the results for the office being protested ~~adjourns~~ or within 5 days after midnight of the date the election is held, whichever ~~last~~ occurs later.

(3) Before canvassing the returns of the election, the canvassing board shall:

(a) When paper ballots are used, examine the tabulation of the paper ballots cast.

(b) When voting machines are used, examine the counters on the machines of nonprinter machines or the printer-pac on printer machines. If there is a discrepancy between the returns and the counters of the machines

or the printer-pac, the counters of such machines or the printer-pac shall be presumed correct.

(c) When electronic or electromechanical equipment is used, the canvassing board shall examine precinct records and election returns. If there is a clerical error, such error shall be corrected by the county canvassing board. If there is a discrepancy which could affect the outcome of an election, the canvassing board may recount the ballots on the automatic tabulating equipment.

(4)(a) Any candidate whose name appeared on the ballot, any political committee that supports or opposes an issue which appeared on the ballot, or any political party whose candidates' names appeared on the ballot may file a written request with the county canvassing board for a manual recount. The written request shall contain a statement of the reason the manual recount is being requested.

(b) Such request must be filed with the canvassing board prior to the time the canvassing board certifies the results for the office being protested ~~ad-journs~~ or within 72 hours after midnight of the date the election was held, whichever occurs later.

(c) The county canvassing board may authorize a manual recount. If a manual recount is authorized, the county canvassing board shall make a reasonable effort to notify each candidate whose race is being recounted of the time and place of such recount.

(d) The manual recount must include at least three precincts and at least 1 percent of the total votes cast for such candidate or issue. In the event there are less than three precincts involved in the election, all precincts shall be counted. The person who requested the recount shall choose three precincts to be recounted, and, if other precincts are recounted, the county canvassing board shall select the additional precincts.

(5) If the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall:

(a) Correct the error and recount the remaining precincts with the vote tabulation system;

(b) Request the Department of State to verify the tabulation software; or

(c) Manually recount all ballots.

(6) Any manual recount shall be open to the public.

(7) Procedures for a manual recount are as follows:

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

(b) If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing board for it to determine the voter's intent.

(8) If the county canvassing board determines the need to verify the tabulation software, the county canvassing board shall request in writing that the Department of State verify the software.

(9) When the Department of State verifies such software, the department shall:

(a) Compare the software used to tabulate the votes with the software filed with the Department of State pursuant to s. 101.5607; and

(b) Check the election parameters.

(10) The Department of State shall respond to the county canvassing board within 3 working days.

~~(11) Any candidate for nomination or election, or any elector qualified to vote in the election related to such candidacy, shall have the right to protest the returns of the election or the practices attendant thereto as being fraudulent by presenting to any circuit judge of the circuit wherein such fraud is alleged to have occurred a sworn, written protest. If it is alleged that fraudulent returns or practices exist in more than one county, venue for such protest shall be in any such county wherein such fraud is alleged to have occurred.~~

~~(a) The protest shall be presented to a circuit judge prior to the time the canvassing board adjourns or within 5 days after midnight of the date the election occurs, whichever last occurs.~~

~~(b) The circuit judge to whom the protest is presented shall have authority to fashion such orders as he or she may deem necessary to ensure that such allegation is investigated, examined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances. Any candidate or elector presenting such a protest to a circuit judge shall be entitled to an immediate hearing thereon or to any appropriate relief.~~

Section 2. Section 102.167, Florida Statutes, is amended to read:

102.167 Form of protest of election returns.—

(4) The form of the "Protest of Election Returns to Canvassing Board" shall be as follows:

PROTEST OF ELECTION RETURNS TO
CANVASSING BOARD

..., Florida

..., 19....

As provided in Section 102.166(1), Florida Statutes, I, of County, Florida, believe the election returns from Precinct No. in the election 19.... are erroneous.

I hereby protest the canvass of such returns by the Canvassing Board, and request that said returns be investigated, examined, checked, and corrected by said Canvassing Board. The basis for this protest is

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Under penalties of perjury, I swear (or affirm) that I have read the foregoing and that the facts alleged are true, to the best of my knowledge and belief.

...(Signature of person protesting election returns)...

~~(2) The form of the "Protest of Election Returns to Circuit Judge" shall be as follows:~~

PROTEST OF ELECTION RETURNS TO
CIRCUIT JUDGE

...., Florida

...., 19....

~~As provided in Section 102.166(2), Florida Statutes, I, of Florida, being a qualified elector in Precinct No. of County, Florida, believe the election returns from Precinct No. in the election of 19.... are fraudulent.~~

~~I hereby protest against the canvass of such returns by the Canvassing Board, and request that said returns be investigated, examined, checked, and corrected. The basis for this protest is~~

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~~Under penalties of perjury, I swear (or affirm) that I have read the foregoing and that the facts alleged are true, to the best of my knowledge and belief.~~

~~...(Signature of person protesting election returns)...~~

Section 3. Section 102.168, Florida Statutes, is amended to read:

102.168 Contest of election.—

(1) Except as provided in s. 102.171, the certification of election or nomination of any person to office, or of the result on any question submitted by referendum, may be contested in the circuit court by any unsuccessful candidate for such office or nomination thereto or by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively.

(2) Such contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court within 10 days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results of the election being contested or within 5

days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results of that particular election following a protest pursuant to s. 102.166(1), whichever occurs later, adjourns, and

(3) The complaint shall set forth the grounds on which the contestant intends to establish his or her right to such office or set aside the result of the election on a submitted referendum. The grounds for contesting an election under this section are:

(a) Misconduct, fraud, or corruption on the part of any election official or any member of the canvassing board sufficient to change or place in doubt the result of the election.

(b) Ineligibility of the successful candidate for the nomination or office in dispute.

(c) Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.

(d) Proof that any elector, election official, or canvassing board member was given or offered a bribe or reward in money, property, or any other thing of value for the purpose of procuring the successful candidate's nomination or election or determining the result on any question submitted by referendum.

(e) Any other cause or allegation which, if sustained, would show that a person other than the successful candidate was the person duly nominated or elected to the office in question or that the outcome of the election on a question submitted by referendum was contrary to the result declared by the canvassing board or election board.

(4) The canvassing board or election board shall be the proper party defendant, and the successful candidate shall be an indispensable party to any action brought to contest the election or nomination of a candidate.

(5) A statement of the grounds of contest may not be rejected, nor the proceedings dismissed, by the court for any want of form if the grounds of contest provided in the statement are sufficient to clearly inform the defendant of the particular proceeding or cause for which the nomination or election is contested.

(6) A copy of the complaint shall be served upon the defendant and any other person named therein in the same manner as in other civil cases under the laws of this state. Within 10 days after the complaint has been served, the defendant must file an answer admitting or denying the allegations on which the contestant relies or stating that the defendant has no knowledge or information concerning the allegations, which shall be deemed a denial of the allegations, and must state any other defenses, in law or fact, on which the defendant relies. If an answer is not filed within the time prescribed, the defendant may not be granted a hearing in court to assert any claim or objection that is required by this subsection to be stated in an answer.

(7) Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing. However, the

court in its discretion may limit the time to be consumed in taking testimony, with a view therein to the circumstances of the matter and to the proximity of any succeeding primary or other election.

(8) The circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.

Section 4. Section 102.171, Florida Statutes, is created to read:

102.171 Contest of election to Legislature.—The jurisdiction to hear any contest of the election of a member to either house of the Legislature is vested in the applicable house, as each house, pursuant to s. 2, Art. III of the State Constitution, is the sole judge of the qualifications, elections, and returns of its members. Therefore, the certification of election of any person to the office of member of either house of the Legislature may only be contested in the applicable house by an unsuccessful candidate for such office, in accordance with the rules of that house. This section does not apply to any contest of the nomination of any person for the office of member of either house of the Legislature at any primary or special primary election in which only those qualified electors who are registered members of the political party holding such primary election may vote, as provided for in s. 5(b), Art. VI of the State Constitution. This section does apply to any contest of a primary or special primary election for the office of member of either house of the Legislature in which all qualified electors may vote, as provided for in s. 5(b), Art. VI of the State Constitution, and the recipient of the most votes is deemed to be elected according to applicable law.

Section 5. This act shall take effect July 1, 1999.

Approved by the Governor June 11, 1999.

Filed in Office Secretary of State June 11, 1999.