

DEPARTMENT OF STATE

Division of Elections

RULE NO.:

RULE TITLE:

1S-2.031

Recount Procedures

2ND NOTICE OF CHANGE

Notice is hereby given that proposed Rule 1S-2.031 published in the F.A.W., Page 4903, Vol. 29, No. 50, on December 12, 2003, has been further changed to reflect comments received from the public and from the Joint Administrative Procedures Committee.

Changes were made to Rule 1S-2.031, F.A.C., so that it now reads:

1S-2.031 Recount Procedures.

(1) All procedures relating to machine and manual recounts shall be open to the public.

(2) At least two members of the canvassing board shall be present during all times a machine or manual recount is being conducted.

(3) All recounts are to be ordered by the board responsible for certifying the results of the race or races being recounted.

(4) As used in this rule, "undervote" means that the tabulator recorded no vote for the office or question or that the elector did not designate the number of choices allowed for the race.

(5) Machine Recounts shall be conducted as follows:

(a) The canvassing board responsible for ordering the machine recount shall be responsible for notifying the candidates or committees in the affected race or races that a machine recount will be conducted. In addition, notice of the machine recount shall be posted on the door of the public entrance to the building where the supervisor of elections office is housed so that the notice is accessible to the public 24 hours a day.

(b) Optical Scan Ballot Machine Recounts

1. The tabulating equipment being used in the recount must be tested pursuant to the provisions of s. 101.5612, F.S. The canvassing board may, but is not required to, use the same tabulating equipment that ballots were originally tabulated on. If the test shows no error, the results of the machine recount shall be deemed correct. If the test indicates an error, the canvassing board shall correct the error and repeat the machine recount.

2. Procedure when only one race is being recounted or where more than one race is being recounted and the voting system will allow for the sorting of overvotes and undervotes in more than one race at the same time:

a. The supervisor of elections shall change the election parameters so that the recounted race or races will be tabulated and so that ballots containing overvotes and undervotes in the recounted race or races can be sorted from the other ballots during the machine recount.

b. The canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the recounted race or races. During this process, the overvoted and undervoted ballots in the recounted race or races must be sorted.

c. Sorted ballots shall be placed in a sealed container or containers until it is determined whether a manual recount will be conducted. Seal numbers shall be recorded at the time the ballots are placed in the containers.

3. Procedure when more than one race is being recounted by machine and the voting system does not allow the sorting of overvotes and undervotes on more than one race at a time:

a. The canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the affected races.

b. The canvassing board shall produce vote counts for those races involved in the machine recount.

c. Prior to a manual recount being conducted, the supervisor of elections shall change the election parameters and the ballots for the manually recounted race or races shall be put back through the tabulating equipment and overvotes and undervotes for each race shall be sorted separately.

(c) Touchscreen Ballot Machine Recounts

1. The county canvassing board shall be required to produce printed vote totals for the affected race or races for each precinct.

2. The county canvassing board shall verify that the total votes for the recounted race or races taken from the printed vote totals for each precinct are the same as the total votes shown on the county totals from election night. If there is a discrepancy, the county canvassing board shall investigate and resolve the discrepancy.

~~(6)-(4)~~ The following procedures apply to manual recounts of optical scan ballots involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

~~(a) All procedures related to the manual recount shall be open to the public.~~

~~(b) At least two members of the county canvassing board shall be present during all times the recount is in process.~~

~~(c) The county canvassing board shall supervise the procedure used to identify and sort overvotes and undervotes in the affected race or issue. If the manual recount is being conducted at a location different from the location of the sorting process or is not being started immediately after the sorting, the sorted ballots shall be placed in a sealed container or containers until the manual recount is started. Seal numbers shall be recorded and announced at the time they are placed on the containers and the seal number shall be announced when the seal is broken and the ballots are removed from the container for the recount.~~

~~(a) (d)~~ Ballots with overvotes and undervotes shall be transported to the location of the manual recount by two members of the county canvassing board and a sworn law enforcement officer. From the time the manual recount is started until completion of the recount, including times of recess, the ballots shall be guarded by a sworn law enforcement officer.

~~(b) (e)~~ If the manual recount is ordered by the Elections Canvassing Commission, the Commission shall notify the candidates and chairmen of the state executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of ~~an~~ a ballot issue,

that a manual recount has been ordered. The candidates or chairmen are responsible for contacting the supervisor of elections in each county involved in the manual recount to find out when and where the recount will be conducted and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

(c) (~~f~~) If the manual recount is ordered by the county canvassing board, the supervisor of elections shall notify the candidates and chairmen of the county executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of ~~an~~ a ballot issue, that a recount has been ordered and shall provide information regarding the time and the place of the manual recount and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

(d) (~~g~~) In addition, each county canvassing board shall provide public notice of the time and place of the manual recount immediately after determining the need for a manual recount pursuant to Section 102.166, F.S. The notice shall be in either a newspaper of general circulation in the county or posted in at least four conspicuous locations in the county. Because of the time constraints in conducting the manual recount, the canvassing board shall also contact media outlets in the community so that the public is made aware of the recount as soon as possible. The manual recount shall begin as soon as practicable in order for the recount to be concluded in time for the certification of results to be submitted pursuant to Section 102.112, F.S.

(e) (~~h~~) The manual recount shall be conducted in a room large enough to accommodate the necessary number of counting teams, the canvassing board members and representatives of each candidate, political party or political committee entitled to have representatives. Members of the public and the press (observers) shall be allowed to observe the recount from a separate area designated by the county canvassing board, which area may be outside of the actual recount area but which will allow the observers to view the activities. In addition to the

sworn law enforcement officer guarding the ballots, there shall be a sworn law enforcement officer to keep order in and around the recount area.

(f) (i) The canvassing board shall determine the number of overvotes and undervotes to be manually recounted. If the recount involves candidates or issues on a statewide or multicounty basis, each county canvassing board shall notify the Elections Canvassing Commission of the number of overvotes and undervotes in the county for the affected race. Any candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the manual recount, presuming recount results most favorable and least favorable to the candidate, shall be entitled to representatives at the recount as provided in (g). In addition, in any primary where more than one candidate may proceed to a subsequent primary or general election, the candidates receiving the highest and second highest number of votes shall be entitled to representatives as provided in (g) at the recount if the recount could result in those candidates switching positions in the official returns. ~~In a first primary election, any candidate who could move into first or second place if all of the overvotes and undervotes were allocated to such candidate and any candidate who could lose his or her position in first or second place if all of the overvotes and undervotes were allocated to another candidate shall be entitled to representatives at the recount. In a second primary or general election or if there is only one primary, any candidate who could move into first place if all of the overvotes and undervotes were allocated to such candidate and any candidate who could lose his or her position in first place if all of the overvotes and undervotes were allocated to another candidate shall be entitled to representatives at the recount.~~

(g) (j) Each candidate entitled to representatives as outlined in (f) (i) is entitled to a number of representatives equal to the number of counting teams plus an additional representative for the county canvassing board. If the race being recounted is a partisan race, each political party with candidates entitled to representatives is entitled to one representative. Each candidate or political party entitled to representatives must provide a list of the names of each representative designated.

(h) ~~(k)~~ In order to be entitled to representatives at the manual recount, a political committee supporting or opposing ~~an~~ a ballot issue which is being recounted must have provided in its statement of organization, on file before the election, that the committee is specifically supporting or opposing the issue in question. If more than one committee is registered as supporting or opposing the issue, each side shall be entitled to one representative per counting team plus one for the canvassing board, regardless of the number of committees supporting or opposing the ballot issue. The canvassing board shall notify each committee chairman of the number of representatives it is entitled to have present at the recount, which shall be determined by taking the total number of representatives allowed and dividing it by the number of registered committees on that side of the issue based on the number of committees involved. The committee chairman must provide a list of the names of each representative designated.

(i) ~~(l)~~ In the case of a manual recount regarding the retention of a judicial candidate, the judicial candidate is entitled to representatives equal to the number of counting teams plus an additional representative for the county canvassing board. If there are political committees organized to oppose the retention of such judicial candidate, those committees are entitled to representatives pursuant to (h) ~~(k)~~.

(j) ~~(m)~~ Representatives and observers must not interfere with or disturb the recount in any way. If the conduct of the representatives or observers impedes the recount process, the recount will stop until the situation is corrected. If the disturbance continues, upon majority vote of the canvassing board, the persons causing the disturbance shall be removed from the premises by the law enforcement officer charged with maintaining order at the recount.

(k) ~~(n)~~ Prior to the beginning of the manual recount, the canvassing board shall review the rules and statutes governing recount procedures and voter intent with the members of the counting teams and with the representatives entitled to be present. At the beginning of the manual recount, the seal numbers on the containers shall be announced as they are broken and compared to the numbers previously recorded.

(l) ~~(e)~~ Each counting team shall review the ballots before them to determine if there is or is not a clear indication that the voter has made a definite choice, as specified in Rule 1S-2.027, F.A.C. If the counting team is unable to make the determination, or if there is an objection to the decision of the counting team by a designated representative, the ballot shall be set aside for the county canvassing board's determination.

(m) ~~(f)~~ Each counting team shall place the ballots in stacks indicating:

1. Votes for each candidate or issue choice;
2. Ballots which the counting team has determined there is no clear indication that the voter made a definite choice for an office or ballot question; and
3. Ballots to be set aside for the canvassing board's determination.

(n) ~~(g)~~ The counting team shall count and record the number of votes for each candidate or issue choice, the number of ballots which the counting team has determined there is no clear indication that the voter made a definite choice, and the number of ballots which are to be given to the canvassing board for its determination and shall submit those totals to the county canvassing board.

(o) ~~(h)~~ Each ballot set aside because the counting team was unable to make a determination that there is a clear indication that the voter has made a definite choice must be placed in a separate envelope with a notation of the precinct number, why the team was unable to make the determination, and the names of the members of the counting team. If a ballot was set aside because of an objection to the decision of the counting team by a representative, the envelope must contain the precinct number, the names of the members of the counting team, the counting team's initial determination, the reasoning behind the challenge and the name and representative capacity of the person bringing the challenge.

(p) ~~(i)~~ The county canvassing board shall review each ballot set aside to determine if there is or is not a clear indication that the voter has made a definite choice, as specified in Rule 1S-2.027, F.A.C. All three

members of the county canvassing board must be present for this determination and the determination must be by majority vote.

(q) (†) The records of the manual recount shall detail the number of votes each candidate or issue choice received and the number of ballots not allocated to any candidate or issue choice. The canvassing board shall then certify the number of votes for each candidate or issue choice by combining the totals on the machine during the sorting process with the totals of the manual recount.

(r) (†) The activities of the canvassing board in making determinations of ballots to be counted shall be recorded by either audio or audio/video tape. In addition, minutes of the manual recount shall be made and approved by the canvassing board. All tapes and minutes shall be made available to the public within 2 weeks of the time the canvassing board certifies the results of the election.

(s) If ballots were sorted for more than one race during the machine recount, the following additional procedures shall be used:

1. The election parameters shall be changed so that only overvoted and undervoted ballots for one recounted race will be sorted.

2. All ballots previously sorted pursuant to subsection (5)(b)2. shall be put back through the tabulating equipment to sort the ballots for the first manually recounted race.

3. If there is another race to be manually recounted, following the first manual recount, the sorted ballots from the first manually recounted race will be combined with the other sorted ballots.

4. The election parameters shall be changed to sort the overvoted and undervoted ballots for the next manually recounted race.

5. All previously sorted ballots shall be put back through the tabulating equipment to sort the ballots for the next manually recounted race.

6. The canvassing board shall make an identifying mark or notation on each sorted ballot, in an area that does not interfere with the counting of the ballot, to indicate that the ballot was a manually recounted ballot for a particular race.

(t) If ballots were not sorted during the machine recount, the following procedures shall be used:

1. The election parameters shall be changed so that overvotes and undervotes in the first manually recounted race are identified and sorted for manual review.

2. Following the manual recount, if there is another race to be recounted, the sorted ballots from the first manual recount must be placed back in with the other ballots. The election parameters shall be changed to identify and sort ballots for the next manually recounted race.

3. The canvassing board shall make an identifying mark or notation on each sorted ballot, in an area that does not interfere with the counting of the ballot, to indicate that the ballot was a manually recounted ballot for a particular race.

(7) When a manual recount is ordered and touchscreen ballots are used, no manual recount of undervotes and overvotes cast on a touchscreen system shall be conducted since these machines do not allow a voter to cast an overvote and since a review of undervotes cannot result in a determination of voter intent as required by Section 102.166(5), F.S. In this case, the results of the machine recount conducted pursuant to (5)(c) shall be the official totals for the touchscreen ballots.

(8) (2) Following a manual recount, the county canvassing board shall examine the ballots that were not allocated to any candidate or issue choice to determine if revisions to the voter intent rule are necessary and shall so notify the Division of Elections.

Specific Authority 102.166 FS. Law Implemented 102.166 FS. History–New 5-30-02, Amended _____.