



## Legend

Of Changes Made to Florida Senate Bill 2544 & House Bill 1521

### Post-Election Audits Last Best Draft

2008

1. Title changes have not yet been addressed
2. "postelection" has been changed to "post-election" throughout
3. "contest" has been changed to "race" throughout
4. "paper" has been changed to "marksense" throughout, and tied to statutory definition at [97.021\(3\)\(a\)](#)
5. The description of races to be audited further to this bill now reads, "Audits shall be conducted for each election held for a federal office, the Governor, a member of the Cabinet, and a member of the Legislature." This simplifies the provision, reduces the number of races, eliminates some state and all local races for the present (which are the most labor-intensive and complex to define), and allows Florida to take a measured and manageable step into post-election auditing that can be expanded upon in future.
6. Suggest language be added to provide for Division of Elections study for the purpose of expanding post-election audits to cover more or all races in Florida elections, providing at least two public comment windows, and report the results of that study publicly by 1 June 2009. This might include pilots during the 2008 fall elections.
7. The third member of the audit team shall have verifiable expertise in elections and Florida law.
8. New language has been added to define parameters of statistically-based audit.
9. Audits shall commence *immediately* after random selection instead of 24 hours after. (mitigates security exposure)
10. New language has been added to define audit unit selection method.
11. Clarification of escalation language has been added (this was lost in bill drafting)

12. Discretionary audits are provided for. Persons qualified to contest elections (candidates, voters, taxpayers) may require that up to 2% of specific audit units be audited in races already being audited further to this bill – at the expense of the challenger. (need review of term, “shall be entitled to require”) (Discretionary audits provide dynamic review where challengers who may have special knowledge direct, enhancing the efficiency and overall benefit of audits, and increasing losing candidate and public confidence in results)
13. The standard for transparency has been put back in, having been left out by bill drafting. Audio/video alternative has been removed.

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1                   A bill to be entitled  
2           An act relating to post-election audits; repealing s.  
3           101.591, F.S., relating to audits of the voting system of  
4           any county; repealing s. 101.5911, F.S., relating to  
5           rulemaking authority for procedures regarding audits of a  
6           voting system; creating s. 101.592, F.S.; requiring that  
7           the Secretary of State appoint an independent post-  
8           election audit team each year; requiring that the  
9           Secretary of State direct hand-to-eye counts of certain  
10          ballots; requiring that county election officials conduct  
11          such counts; requiring that audits be conducted for  
12          certain elections; authorizing the audit team to conduct  
13          audits of certain elections at its discretion; requiring  
14          that the number of audits conducted exceed a specified  
15          minimum; requiring that each county canvassing board  
16          appoint a post-election audit official from within the  
17          board's membership; providing for the calculation of audit  
18          units; providing for audits of records produced by  
19          electronic voting machines that do not produce voter-  
20          verifiable marksense ballots; defining the term "audit  
21          unit"; providing a maximum number of ballots that may be  
22          included in a single audit unit; providing for the storage  
23          and publication of election results; providing for  
24          membership of the audit team; excluding certain persons  
25          from serving as a member of the audit team; requiring that  
26          each county, the audit team, and the Secretary of State  
27          perform certain actions before commencing an audit;  
28          providing procedures and requirements for audits;  
29          providing that another audit unit may be selected for  
30          audit if the results of an initial audit are found to be

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31 unusable; requiring that an investigation be conducted of  
32 such unusable audits; requiring that the Secretary of  
33 State, county, audit team, and canvassing board take  
34 certain actions based on the results of each audit;  
35 requiring that the results of an audit be announced  
36 publicly and published; requiring that an announcement of  
37 audit results include certain information; requiring that  
38 the public be allowed to observe the audit process;  
39 creating s. 101.593, F.S.; requiring that the Department  
40 of state adopt rules to administer post-election audits;  
41 requiring that the audit team provide technical assistance  
42 in the preparation of rules related to audits; requiring  
43 that the department review rules for certain purposes;  
44 providing an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Section 101.591, Florida Statutes, as amended by  
49 section 8 of chapter 2007-30, Laws of Florida, is repealed.

50 Section 2. Section 101.5911, Florida Statutes, is repealed.

51 Section 3. Section 101.592, Florida Statutes, is created to  
52 read:

53 101.592 Post-election audits.--

54 (1) Notwithstanding any law or rule to the contrary, the  
55 Secretary of State shall appoint an independent post-election  
56 audit team each year. The Secretary of State, based on a  
57 recommendation of a majority of the audit team, shall direct  
58 random hand-to-eye counts of voter-verifiable marksense ballots,  
59 as defined in s. [97.021\(3\)\(a\)](#). Such counts shall be conducted by  
60 appropriate county election officials. Audits shall be conducted

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61 for each election held for a federal office, the Governor, a  
62 member of the Cabinet, and a member of the Legislature. In each  
63 county, the audit shall be conducted in at least 2 percent of the  
64 audit units in which each audited election appears on the ballot.  
65 Before each election, each county canvassing board shall appoint  
66 a post-election audit official who is a member of the county  
67 canvassing board as the county's official point of contact with  
68 the Secretary of State and the audit team throughout the post-  
69 election audit. To meet the requirements with respect to each  
70 audited race pursuant to subsection (4), the Secretary of State  
71 shall direct each county to audit its pro rata share of the total  
72 number of randomly selected audit units as determined by the  
73 audit team. If any county's share of such selected audit units is  
74 calculated to be other than a whole number of audit units, such  
75 quantity shall be rounded up to the next greater whole number.  
76 Any audit units randomly selected for auditing from the entire  
77 population of audit units in a county may be used to audit any  
78 race appearing on the ballot in such audit units.

79 (a) Cast-vote records produced by direct-recording  
80 electronic voting machines that do not produce voter-verifiable  
81 marksense ballots shall be audited for the purposes of this  
82 section by comparing the tallies of the cast-vote records to the  
83 tallies produced on the printed results tape.

84 (b) For purposes of this section, the term "audit unit"  
85 means the voter-verifiable marksense ballots counted by a single  
86 piece of certified voting equipment used to tabulate votes, or a  
87 batch of such ballots collected and counted as prescribed  
88 pursuant to paragraph (4)(e). The maximum number of ballots in  
89 any single audit unit may not exceed 5,000. All electronic vote  
90 counts with respect to any audit unit which are used to determine

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91 the election results reported by the counties must be securely  
92 stored at the time they are produced and made available promptly  
93 for subsequent comparison to the hand-to-eye counts of the  
94 corresponding audit units selected for auditing. Vote counts  
95 shall also be reported by precinct pursuant to s. 101.573.

96 (2) The membership of the audit team shall be at the  
97 discretion of the Secretary of State, but must consist of three  
98 persons, at least one of whom must have verifiable expertise in  
99 the field of statistics, at least one other member must have  
100 verifiable expertise in the field of auditing, and at least one  
101 other must have verifiable expertise in the field of elections  
102 and Florida law. A person is ineligible to serve as a member of  
103 the audit team if he or she currently or has during the  
104 immediately preceding 2 years:

105 (a) Served as an employee of, or reported to, the  
106 Department of State;

107 (b) Served in any position on any political campaign or  
108 committee for any party, candidate, or issue that has appeared on  
109 any ballot in this state; or

110 (c) Served as an officer or employee of, or provided any  
111 goods or services to, any entity that designs, manufactures, or  
112 services any voting systems or parts thereof used in this state.

113 (3) Before commencing the audit procedures pursuant to  
114 subsection (4):

115 (a) Each county shall forward to the Secretary of State a  
116 report of its ballot accounting performed in the election on a  
117 standard form prepared for this purpose.

118 1. The report must include a summary and detailed  
119 information regarding the results of the ballot accounting,  
120 including all outstanding discrepancies and investigations

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121 related thereto, and the reasons for all outstanding  
122 discrepancies, if known.

123 2. Ballot accounting reports shall account for all used,  
124 unused, spoiled, provisional, and absentee ballots used in the  
125 election, including election-day, absentee, early voting,  
126 provisional, and overseas ballots.

127 (b) The Secretary of State and the audit team shall review  
128 the county ballot accounting reports to determine if the number  
129 of ballots cast accurately reflects voter turnout.

130 (c) The Secretary of State, based on the recommendation of  
131 a majority of the audit team, may order additional audits,  
132 pursuant to paragraph (4)(g), or other investigations based upon  
133 the review of county ballot accounting reports.

134 (4) The Secretary of State, based on the recommendation of  
135 a majority of the audit team and pursuant to subsection (1),  
136 shall require county election officials to conduct an audit of  
137 the results of an election in accordance with the following  
138 procedures:

139 (a) Any procedure designed or adopted by the Secretary of  
140 State shall be implemented to ensure that for each federal,  
141 gubernatorial, or other audited statewide race, if a 100 percent  
142 manual recount of the voter-verifiable marksense ballots would  
143 alter the original outcome, there is at most a 1 percent  
144 probability that the audit result will confirm the original  
145 outcome; and that for each state legislative race, if a 100  
146 percent manual recount of the voter-verifiable marksense ballots  
147 would alter the original outcome, there is at most a 10 percent  
148 probability that the audit result will confirm the original  
149 outcome. Any such procedure shall be based upon scientifically  
150 reasonable assumptions with respect to each audited election,

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151 including, but not limited to, that within any audit unit at  
152 least 20 percent of the total votes cast may have been counted  
153 for a candidate or ballot position other than the one intended by  
154 the voters, and that the number of votes cast per audit unit  
155 varies.

156 (b) Any procedure designed, adopted, or implemented by the  
157 Secretary of State for each county and municipal race held in  
158 fewer than 100 election precincts, but more than a single  
159 election precinct, shall be conducted in at least two audit  
160 units.

161 (c) Within a reasonable period of time after the final vote  
162 count of an election has been tabulated and announced, the  
163 Secretary of State, based on the recommendation of a majority of  
164 the audit team, shall determine the number of audit units in the  
165 state, separated by county, in which audits shall be conducted  
166 pursuant to this section, and inform each county canvassing board  
167 using a standard form. Such information shall be posted on the  
168 Secretary of State's website immediately after it is delivered to  
169 the county canvassing boards. Within 48 hours after receiving  
170 direction from the Secretary of State, each county canvassing  
171 board shall conduct a public meeting for the purpose of selecting  
172 audit units to be audited according to the Secretary of State's  
173 direction. The meeting shall be noticed at least 24 hours in  
174 advance on that county's website and at each election office and  
175 the main county government building in that county. An audit  
176 shall commence immediately after each county's random selection  
177 of audit units.

178 (d) With respect to votes cast at the polling place or  
179 early voting site on or before the date of an election other than  
180 an election conducted by provisional ballot, the Secretary of

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181 State shall direct a hand-to-eye count of the voter-verifiable  
182 marksense ballots of the selected audit units used at such  
183 polling places or early voting sites and compare those counts  
184 with the electronic counts of such votes produced and retained  
185 pursuant to paragraph (1)(b).

186 (e) With respect to the votes cast other than at the  
187 polling place or early voting site on or before the date of an  
188 election, or any other votes counted electronically before, on,  
189 or after the date of an election, including overseas ballots, the  
190 Secretary of State shall direct a hand-to-eye count of the voter-  
191 verifiable marksense ballots as follows:

192 1. If the number of such ballots to be counted on a single  
193 certified piece of voting equipment does not exceed the maximum  
194 audit unit size as prescribed in paragraph (1)(b), the county  
195 supervisor of elections shall cause such votes to be audited in  
196 the manner prescribed in paragraph (d).

197 2. If the number of such ballots to be counted on a single  
198 certified piece of voting equipment exceeds the maximum audit  
199 unit size prescribed in paragraph (1)(b), the county supervisor  
200 of elections shall divide the ballots into batches to be used as  
201 audit units as described in paragraph (1)(b). Each batch shall  
202 contain approximately the average number of ballots cast in the  
203 audit units residing at the polling places within the county, but  
204 need not be associated with any particular election precinct or  
205 polling place. The number of ballots in the final batch may be  
206 fewer than the average number, but may not be fewer than 10  
207 ballots. Overseas ballots arriving after election day shall be  
208 included in the audit units if they are counted electronically.  
209 As the ballots comprising each batch are counted electronically,  
210 each batch shall be assigned a unique identification number.

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211 Immediately after counting the ballots comprising each batch, a  
212 cumulative summary vote tally report containing the batch's  
213 unique identification number, the vote totals of the batch, and  
214 all previously counted batches in the election, shall be produced  
215 and retained as prescribed in paragraph (1)(b). The reports are  
216 subject to the same secure chain of custody as the ballots  
217 comprising the batches and shall be used by the county canvassing  
218 board to determine the electronic vote tally for each batch. The  
219 audit team shall compare the sum of the vote tallies of all the  
220 reports to the official results announced by the county,  
221 investigate any discrepancies, and report any unresolved  
222 discrepancies, including the reasons for such discrepancies, if  
223 known. The canvassing board shall promptly report to the audit  
224 team its total number of audit units once known. The audit team  
225 shall include all the audit units from each county in the random  
226 selection process and if an audit unit is selected, such unit  
227 shall be audited in the same manner provided in paragraph (d) for  
228 audit units residing at polling places. However, during such  
229 audits, the hand-to-eye counts shall be compared to the  
230 electronic vote tallies derived from the batch reports.

231 (f) The selection of the audit units to be audited may be  
232 made using a simple random sample in which all audit units in  
233 which an audited election is held have an equal chance of being  
234 selected. Alternatively, the selection may be made randomly using  
235 an alternative sample design to be determined by the Secretary of  
236 State, based on a recommendation of a majority of the audit team,  
237 provided that every audit unit in which an audited election is  
238 held is subject to being selected, that the selection is random,  
239 and that the alternative design has a standard error that is no  
240 larger than that of a simple random sample. In every 10th polling

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241 place in which an audit unit is selected pursuant to paragraph  
242 (d), one direct-recording electronic voting machine shall be  
243 audited in accordance with paragraph (1)(a). Notwithstanding the  
244 requirements set forth in this paragraph, the audit team may  
245 initiate, direct, or conduct an audit of any audit unit not  
246 randomly selected for auditing for which a majority of the audit  
247 team determines, from the unaudited election results, a review of  
248 ballot accounting, past election results, or other data, that  
249 there is a substantial possibility that a complete hand-to-eye  
250 count or review of ballot accounting would alter the outcome of  
251 one or more contests.

252 (g) If the Secretary of State, based on a recommendation of  
253 a majority of the audit team, determines that any of the hand-to-  
254 eye counts conducted under this section indicates a substantial  
255 possibility that a complete hand-to-eye count would alter the  
256 outcome of any race in the state, the Secretary of State shall  
257 direct hand-to-eye counts pursuant to this section in such  
258 additional audit units as he or she considers appropriate to  
259 resolve any such possibility. Notwithstanding any requirements to  
260 the contrary, additional hand-to-eye counts shall be conducted if  
261 in the initial audit conducted pursuant to this section any  
262 discrepancy or discrepancies attributable to the electronic  
263 counting system could alter the vote share of any candidate or  
264 ballot race by one-tenth of 1 percent or more of the hand-counted  
265 votes in the sample. Under such circumstances, the audit of the  
266 election shall be escalated counting a second number of audit  
267 units equal to the number of audit units counted in the initial  
268 audit and shall be conducted under the same procedures used to  
269 conduct the initial audit. However, if the initial audit  
270 comprises more than one-half the total number of audit units in

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271 the election, such audit shall be a full hand-to-eye count of the  
272 remaining unaudited election precincts and audit units. Further  
273 hand-to-eye counts shall be conducted if any discrepancy or  
274 discrepancies attributable to the electronic counting system  
275 detected by the initial or subsequent escalated audit indicates a  
276 substantial possibility that a complete hand-to-eye recount would  
277 alter the outcome of the audited election. Discrepancies  
278 resulting from marginally marked ballots accepted by the county  
279 canvassing board pursuant to s. [102.166\(4\)](#) may not be considered  
280 when making the determination of whether the voting system has  
281 met the standard of acceptable performance for any audit unit. If  
282 the Secretary of State directs the county to perform a subsequent  
283 escalated audit, the county canvassing board shall conduct such  
284 audit within 48 hours after receiving such direction.

285 (h) Notwithstanding any requirements to the contrary, any  
286 person qualified to file a contest of election, as defined in s.  
287 [102.168\(1\)](#), shall be entitled to require any canvassing board of  
288 a county in which they are so qualified, to conduct a  
289 "discretionary audit" of up to two percent of specific audit  
290 units, rounded to the next whole number of audit units, from a  
291 specific race already subject to audit pursuant to this section.  
292 Such discretionary audits shall be conducted pursuant the terms  
293 of this section and all reasonable costs shall be paid by the  
294 party making the challenge, according to rules promulgated for  
295 this purpose.

296 (i) If the voter-verifiable marksense ballots in any audit  
297 unit are found to be unusable for an audit for any reason  
298 whatsoever, another audit unit used in the same election shall be  
299 selected at random by the county canvassing board to replace the  
300 original audit unit in the audit sample. All such selections

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301 shall be made randomly at a public meeting pursuant to subsection  
302 (5). An investigation to determine the reason the voter-  
303 verifiable marksense ballots were compromised and unusable shall  
304 be conducted immediately, and the results of the investigation  
305 shall be made public upon completion.

306 (j) As soon as practicable after the completion of an audit  
307 conducted pursuant to this section, but no later than 11:59 p.m.  
308 on the 7th day after the date of certification of the election by  
309 the county canvassing board, the Secretary of State, based on  
310 approval of a majority of the audit team, shall announce publicly  
311 and publish the results of the audit and include in the  
312 announcement a comparison of the results of the election in the  
313 audit units as determined by the post-election audit and the  
314 final vote count in the county as announced by the county  
315 canvassing boards, including:

316 1. A list, by audit unit, of any discrepancies between the  
317 county's unofficial results and the post-election audit results;

318 2. The initial vote count and any subsequent manual counts  
319 of the voter-verifiable marksense ballots;

320 3. Explanations for such discrepancies, if any; and

321 4. Tallies of all overvotes, undervotes, or their  
322 equivalents, blank ballots, spoiled ballots, and cancellations  
323 recorded on the voter-verifiable paper record.

324 (5) Each public meeting and all ballot counting conducted  
325 in the performance of post-election audits pursuant to this  
326 section shall be conducted in a manner allowing public  
327 observation of the entire process sufficient to witness but not  
328 interfere with the proceedings.

329 Section 4. Section 101.593, Florida Statutes, is created to  
330 read:

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331           101.593 Rulemaking authority for post-election audit  
332 procedures.--

333           (1) The Department of State shall adopt rules to administer  
334 the provisions of s. 101.592, including the standard forms  
335 required to administer post-election audits.

336           (2) The audit team appointed by the Secretary of State  
337 pursuant to s. 101.592 shall provide technical assistance in the  
338 preparation of rules related to post-election audits.

339           (3) The department shall review rules as necessary for the  
340 purpose of addressing new procedures in law, new voting systems  
341 and methods, new statistical formulae, new sample selection  
342 methods, improvements revealed by previous audits, and other  
343 methods to improve efficacy of such procedures.

344           Section 5. This act shall take effect July 1, 2008.