

## CHAPTER 102

## CONDUCTING ELECTIONS AND ASCERTAINING THE RESULTS

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**102.012 Inspectors and clerks to conduct elections.—**

(1) The supervisor of elections of each county, at least 20 days prior to the holding of any election, shall appoint two election boards for each precinct in the county; however, the supervisor of elections may, in any election, appoint one election board if the supervisor has reason to believe that only one is necessary. Each election board shall be composed of three inspectors and a clerk. The clerk shall be in charge of, and responsible for, seeing that the election board carries out its duties and responsibilities. Each inspector and each clerk shall take and subscribe to an oath or affirmation, which shall be written or printed, to the effect that he or she will perform the duties of inspector or clerk of election, respectively, according to law and will endeavor to prevent all fraud, deceit, or abuse in conducting the election. The oath may be taken before an officer authorized to administer oaths or before any of the persons who are to act as inspectors, one of them to swear the others, and one of the others sworn thus, in turn, to administer the oath to the one who has not been sworn. The oaths shall be returned with the poll list and the returns of the election to the supervisor. In all questions that may arise before the members of an election board, the decision of a

majority of them shall decide the question. The supervisor of elections of each county shall be responsible for the attendance and diligent performance of his or her duties by each clerk and inspector.

(2) Each member of the election board shall be able to read and write the English language and shall be a registered qualified elector of the county in which the member is appointed. No election board shall be composed solely of members of one political party; however, in any primary in which only one party has candidates appearing on the ballot, all clerks and inspectors may be of that party. Any person whose name appears as an opposed candidate for any office shall not be eligible to serve on an election board.

(3) The supervisor shall furnish inspectors of election for each precinct with the registration books divided alphabetically as will best facilitate the holding of an election. The supervisor shall also furnish to the inspectors of election at the polling place at each precinct in the supervisor's county a sufficient number of forms and blanks for use on election day.

(4) An election board shall conduct the voting, beginning and closing at the time set forth in s. 100.011. If more than one board has been appointed, the second board shall, upon the closing of the polls, come on duty and count the votes cast. In such case, the first board shall turn over to the second board all closed ballot boxes, registration books, and other records of the election at the time the boards change. The second board shall continue counting until the count is complete or until 7 a.m. the next morning, and, if the count is not completed at that time, the first board that conducted the election shall again report for duty and complete the count. The second board shall turn over to the first board all ballots counted, all ballots not counted, and all registration books and other records and shall advise the first board as to what has transpired in tabulating the results of the election.

(5) In precincts in which there are more than 1,000 registered electors, the supervisor of elections shall appoint additional election boards necessary for the election.

(6) In any precinct in which there are fewer than 300 registered electors, it is not necessary to appoint two election boards, but one such board will suffice. Such board shall be composed of at least one inspector and one clerk.

(7) For any precinct using voting machines, there shall be one election board appointed, plus an additional inspector for each machine in excess of one; however, the supervisor of elections may appoint a greater number of additional inspectors than required by this subsection.

(8) The supervisor of elections shall conduct training classes for inspectors, clerks, and deputy sheriffs prior to each first primary, general, and special election for the purpose of instructing such persons in their duties and responsibilities as election officials. A certificate may be issued by the supervisor of elections to each

person completing such training. No person shall serve as an inspector, clerk, or deputy sheriff for an election unless such person has completed the training class as required. A person who has attended previous training classes conducted within 2 years of the election may be appointed by the supervisor to fill a vacancy on election day. If no person with prior training is available to fill such vacancy, the supervisor of elections may fill such vacancy in accordance with the provisions of subsection (9) from among persons who have not received the training required by this section.

(9) In the case of absence or refusal to act on the part of any inspector or clerk at any precinct on the day of an election, the supervisor shall appoint a replacement who meets the qualifications prescribed in subsection (2). The inspector or clerk so appointed shall be a member of the same political party as the clerk or inspector whom he or she replaces.

**History.**—s. 20, ch. 3879, 1889; RS 174; s. 24, ch. 4328, 1895; s. 8, ch. 4537, 1897; GS 205; RGS 249; s. 1, ch. 8587, 1921; CGL 305; s. 2, ch. 17898, 1937; s. 2, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 3, ch. 28156, 1953; s. 25, ch. 29934, 1955; s. 10, ch. 57-166; s. 1, ch. 63-53; s. 1, ch. 65-416; s. 1, ch. 67-168; s. 1, ch. 67-385; s. 1, ch. 73-151; s. 25, ch. 77-175; s. 43, ch. 79-400; s. 1, ch. 80-264; s. 50, ch. 81-259; s. 19, ch. 84-302; s. 1, ch. 89-46; s. 596, ch. 95-147.

**Note.**—Former s. 99.03.

#### **102.021 Compensation of inspectors, clerks, and deputy sheriffs.—**

(1) Each inspector and each clerk of any election and each deputy sheriff serving at a precinct shall be paid for his or her services by the supervisor of elections, and each inspector who delivers the returns to the county seat shall receive such sums as the supervisor of elections shall determine.

(2) Inspectors and clerks of election and deputy sheriffs serving at the precincts may receive compensation and travel expenses, as provided in s. 112.061, for attending the poll worker classes required by s. 102.012(8).

**History.**—s. 24, ch. 4328, 1895; s. 8, ch. 4537, 1897; GS 206; RGS 250; CGL 306; ss. 1, 2, ch. 20448, 1941; s. 3, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 5, ch. 63-400; s. 1, ch. 65-129; s. 25, ch. 77-175; s. 5, ch. 80-20; s. 597, ch. 95-147.

**Note.**—Former s. 99.04.

#### **102.031 Maintenance of good order at polls; authorities; persons allowed in polling rooms; unlawful solicitation of voters.—**

(1) Each election board shall possess full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvass of the votes.

(2) The sheriff shall deputize a deputy sheriff for each precinct who shall be present during the time the polls are open and until the election is completed, who shall be subject to all lawful commands of the clerk or inspectors, and who shall maintain good order. The deputy may summon assistance from among bystanders to aid him or her when necessary to maintain peace and order at the polls.

(3)(a) No person may enter any polling room or polling place where the polling place is also a polling room, during voting hours except the following:

1. Official poll watchers;
2. Inspectors;
3. Election clerks;
4. The supervisor of elections or his or her deputy;

5. Persons there to vote, persons in the care of a voter, or persons caring for such voter;

6. Law enforcement officers or emergency service personnel there with permission of the clerk or a majority of the inspectors; or

7. A person, whether or not a registered voter, who is assisting with or participating in a simulated election for minors, as approved by the supervisor of elections.

(b) The restriction in this subsection does not apply where the polling room is in an area commonly traversed by the public in order to gain access to businesses or homes or in an area traditionally utilized as a public area for discussion.

(c) No person, political committee, committee of continuous existence, or other group or organization may solicit voters within 50 feet of the entrance to any polling place, or polling room where the polling place is also a polling room, on the day of any election.

1. Solicitation shall not be restricted if:

a. Conducted from a separately marked area within the 50-foot zone so as not to disturb, hinder, impede, obstruct, or interfere with voter access to the polling place or polling room entrance; and

b. The solicitation activities and subject matter are clearly and easily identifiable by the voters as an activity in which they may voluntarily participate; or

c. Conducted on property within the 50-foot zone which is a residence, established business, private property, sidewalk, park, or property traditionally utilized as a public area for discussion.

2. Solicitation shall not be permitted within the 50-foot zone on a public sidewalk or other similar means of access to the polling room if it is clearly identifiable to the poll workers that the solicitation is impeding, obstructing, or interfering with voter access to the polling room or polling place.

(d) For the purpose of this subsection, the term "solicit" shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item.

(e) Each supervisor of elections shall inform the clerk of each precinct of the area within which soliciting is unlawful, based on the particular characteristics of that polling place. The supervisor or the clerk may take any reasonable action necessary to ensure order at the polling places which shall include:

1. Designating a specific area for soliciting pursuant to paragraph (c) of this subsection, or

2. Having disruptive and unruly persons removed by law enforcement officers from the polling room or place or from the 50-foot zone surrounding the polling place.

**History.**—s. 58, ch. 4328, 1895; GS 237; RGS 282; CGL 338; s. 6, ch. 26870, 1951; s. 1, ch. 59-212; s. 25, ch. 77-175; s. 2, ch. 85-205; s. 4, ch. 87-184; s. 15, ch. 87-363; s. 29, ch. 89-338; s. 2, ch. 92-134; s. 598, ch. 95-147.

**Note.**—Former s. 99.38.

#### **102.061 Duties of election board; counting; closing polls.—**

(1) At the close of the election at each precinct, the election board that conducted the election shall turn the

ballot box, registration books, and other records over to the relieving board, when more than one board is conducting the election, which relieving board shall proceed to open the ballot box in the presence of the public desiring to witness the canvass and count the ballots without adjournment or interruption until the count is completed, except for the necessary interruption provided for in s. 102.012. The ballots shall first be counted, and, if the number of ballots exceeds the number of persons who voted, as may appear by the poll list kept by the clerk and by the stubs detached by the inspectors, the ballots shall be placed back into the box, and one of the inspectors shall publicly draw out and destroy unopened as many ballots as are equal to such excess. If two or more ballots are found folded together to present the appearance of a single ballot, they shall be laid aside until the count is completed, and, if, upon comparison of the count and the appearance of such ballots, a majority of the inspectors are of the opinion that the ballots were voted by one person, such ballots shall be destroyed.

(2) In counting the ballots, the election board shall use either the tally call system of counting or a system whereby the ballots are opened and placed in piles according to the candidate voted for and then the number of ballots in each pile is counted. The ballots shall then be reshuffled and the process repeated until the total votes cast for each candidate for each office has been determined; and no other system of counting shall be used.

**History.**—s. 29, ch. 3879, 1889; RS 183; s. 60, ch. 4328, 1895; GS 241; RGS 285; CGL 341; s. 9, ch. 17898, 1937; s. 8, ch. 25384, 1949; s. 6, ch. 26870, 1951; s. 25, ch. 77-175; s. 44, ch. 79-400.

**Note.**—Former s. 99.42.

**102.071 Tabulation of votes and proclamation of results where ballots are used.**—The election board shall post at the polls, for the benefit of the public, the results of the voting for each office or other item on the ballot as the count is completed. Upon completion of all counts in all races, triplicate certificates of the results shall be drawn up by the inspectors and clerk at each precinct upon a form provided by the supervisor of elections which shall contain the name of each person voted for, for each office, and the number of votes cast for each person for such office; and, if any question is submitted, the certificate shall also contain the number of votes cast for and against the question. The certificate shall be signed by the inspectors and clerk, and one of the certificates shall be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication; the duplicate copy of the certificate shall be delivered to the county court judge; and the remaining copy shall be enclosed in the ballot box together with the oaths of inspectors and clerks. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election shall also be transmitted, sealed by the inspectors, with the certificates of result of the election to be filed in the supervisor's office. Registration books and the poll lists shall not be placed in the ballot boxes but shall be returned to the supervisor.

**History.**—s. 30, ch. 3879, 1889; RS 184; s. 61, ch. 4328, 1895; s. 2, ch. 4699, 1899; GS 242; RGS 286; CGL 342; s. 9, ch. 25384, 1949; s. 6, ch. 26329, 1949; s. 6, ch. 26870, 1951; s. 39, ch. 28156, 1953; s. 19, ch. 73-334; s. 25, ch. 77-175; s. 45, ch. 79-400.

**Note.**—Former s. 99.43.

**102.091 Duty of sheriff to watch for violations; appointment of special officers.**—The sheriff shall exercise strict vigilance in the detection of any violations of the election laws and in apprehending the violators. The Governor may appoint special officers to investigate alleged violations of the election laws, when it is deemed necessary to see that violators of the election laws are apprehended and punished.

**History.**—s. 6, ch. 26870, 1951; s. 3, ch. 65-129.

**102.101 Sheriff and other officers not allowed in polling place.**—No sheriff, deputy sheriff, police officer, or other officer of the law shall be allowed within the polling place without permission from the clerk or a majority of the inspectors, except to cast his or her ballot. Upon the failure of any of said officers to comply with this provision, the clerk or the inspectors or any one of them shall make an affidavit against such officer for his or her arrest.

**History.**—s. 58, ch. 4328, 1895; GS 239; RGS 284; CGL 340; s. 6, ch. 26870, 1951; s. 4, ch. 65-129; s. 25, ch. 77-175; s. 599, ch. 95-147.

**Note.**—Former s. 99.41.

**102.111 Elections Canvassing Commission.**—

(1) Immediately after certification of any election by the county canvassing board, the results shall be forwarded to the Department of State concerning the election of any federal or state officer. The Governor, the Secretary of State, and the Director of the Division of Elections shall be the Elections Canvassing Commission. The Elections Canvassing Commission shall, as soon as the official results are compiled from all counties, certify the returns of the election and determine and declare who has been elected for each office. In the event that any member of the Elections Canvassing Commission is unavailable to certify the returns of any election, such member shall be replaced by a substitute member of the Cabinet as determined by the Director of the Division of Elections. If the county returns are not received by the Department of State by 5 p.m. of the seventh day following an election, all missing counties shall be ignored, and the results shown by the returns on file shall be certified.

(2) The Division of Elections shall provide the staff services required by the Elections Canvassing Commission.

**History.**—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 248; RGS 292; CGL 348; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 30, ch. 71-377; s. 2, ch. 77-122; s. 25, ch. 77-175; s. 6, ch. 82-143.

**Note.**—Former s. 99.49.

**102.112 Deadline for submission of county returns to the Department of State; penalties.**—

(1) The county canvassing board or a majority thereof shall file the county returns for the election of a federal or state officer with the Department of State immediately after certification of the election results. If the returns are not received by the department by 5 p.m. on the 7th day after an election, such returns may be ignored and the results on file at that time may be certified by the department.

(2) The department shall fine each board member \$200 for each day such returns are late, the fine to be paid only from the board member's personal funds. Such fines shall be deposited into the Election Campaign Financing Trust Fund, created by s. 106.32.

(3) Members of the county canvassing board may appeal such fines to the Florida Elections Commission, which shall adopt rules for such appeals.

**History.**—s. 30, ch. 89-338.

**102.121 Elections Canvassing Commission to issue certificates.**—The Elections Canvassing Commission shall make and sign separate certificates of the result of the election for federal and state officers, which certificates shall be written and contain the total number of votes cast for each person for each office. The certificates, the one including the result of the election for presidential electors and representatives to Congress, and the other including the result of the election for state officers, shall be recorded in the Department of State in a book to be kept for that purpose.

**History.**—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 250; RGS 294; CGL 350; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175.

**Note.**—Former s. 99.51.

**102.131 Returns before canvassing commission.** If any returns shall appear to be irregular or false so that the Elections Canvassing Commission is unable to determine the true vote for any office, nomination, constitutional amendment, or other measure presented to the electors, the commission shall so certify and shall not include the returns in its determination, canvass, and declaration. The Elections Canvassing Commission in determining the true vote shall not have authority to look beyond the county returns. The Department of State shall file in its office all the returns, together with other documents and papers received by it or the commission. The commission shall canvass the returns for presidential electors and representatives to Congress separately from their canvass of returns for state officers.

**History.**—s. 35, ch. 3879, 1889; RS 189; s. 66, ch. 4328, 1895; GS 249; RGS 293; CGL 349; s. 6, ch. 26870, 1951; s. 5, ch. 65-129; ss. 10, 35, ch. 69-106; s. 25, ch. 77-175; s. 46, ch. 79-400.

**Note.**—Former s. 99.50.

**102.141 County canvassing board; duties.**—

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chair.

(b) If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a

candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member cannot be appointed as provided elsewhere in this subsection, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(2) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor of elections to publicly canvass the absentee electors' ballots as provided for in s. 101.68. Public notice of the time and place at which the county canvassing board shall meet to canvass the absentee electors' ballots shall be given at least 48 hours prior thereto by publication once in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. As soon as the absentee electors' ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor of elections and the office of the county court judge.

(3) The canvass, except the canvass of absentee electors' returns, shall be made from the returns and certificates of the inspectors as signed and filed by them with the county court judge and supervisor, respectively, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before noon of the day following any primary, general, special, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a recount of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine the counters on the machines or the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such

machines or the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4) If the returns for any office reflect that a candidate was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, the board responsible for certifying the results of the vote on such race or measure shall order a recount of the votes cast with respect to such office or measure. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made. Each canvassing board responsible for conducting a recount shall examine the counters on the machines or the tabulation of the ballots cast in each precinct in which the office or issue appeared on the ballot and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such machines or the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(5) The canvassing board may employ such clerical help to assist with the work of the board as it deems necessary, with at least one member of the board present at all times, until the canvass of the returns is completed. The clerical help shall be paid from the same fund as inspectors and other necessary election officials.

(6) At the same time that the results of an election are certified to the Department of State, the county canvassing board shall file a report with the Division of Elections on the conduct of the election. The report shall contain information relating to any problems incurred as a result of equipment malfunctions either at the precinct level or at a counting location, any difficulties or unusual circumstances encountered by an election board or the canvassing board, and any other additional information which the canvassing board feels should be made a part of the official election record. Such reports shall be maintained on file in the Division of Elections and shall be available for public inspection. The division shall utilize the reports submitted by the canvassing boards to determine what problems may be likely to occur in other elections and disseminate such information, along with possible solutions, to the supervisors of elections.

**History.**—s. 46, ch. 6469, 1913; RGS 350; CGL 407; s. 11, ch. 13761, 1929; s. 6, ch. 26870, 1951; s. 1, ch. 57-104; s. 6, ch. 65-129; s. 19, ch. 73-334; s. 26, ch. 77-175; s. 47, ch. 79-400; s. 18, ch. 84-302; s. 4, ch. 86-33; s. 600, ch. 95-147.

**Note.**—Former s. 102.45.

**102.151 County canvassing board to issue certificates; supervisor to give notice to Department of State.** The county canvassing board shall make and sign duplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the num-

ber of votes cast for each candidate or nominee. One of such certificates which relates to offices for which the candidates or nominees have been voted for in more than one county shall be immediately transmitted to the Department of State, and the second copy filed in the supervisor's office. The supervisor shall transmit the Department of State, immediately after the county canvassing board has canvassed the returns of the election, a list containing the names of all county and district officers nominated or elected, the office for which each was nominated or elected, and the mailing address of each.

**History.**—s. 47, ch. 6469, 1913; RGS 351; CGL 408; s. 12, ch. 13761, 1929; s. 5, ch. 25388, 1949; s. 6, ch. 26870, 1951; ss. 10, 35, ch. 69-106; s. 27, ch. 77-175; s. 31, ch. 89-338.

**Note.**—Former s. 102.46.

**102.155 Certificate of election.**—The supervisor shall give to any person the election of whom is certified by the county canvassing board a certificate of the person's election. The Department of State shall give to any person the election of whom is certified by the state canvassing board a certificate of the person's election. The certificate of election which is issued to any person shall be prima facie evidence of the election of such person.

**History.**—s. 32, ch. 3879, 1889; RS 186; s. 63, ch. 4328, 1895; GS 245; RGS 289; CGL 345; s. 2, ch. 26870, 1951; s. 5, ch. 77-175; s. 1393, ch. 95-147.

**Note.**—Former s. 99.46.

**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 adjourns or within 5 days after midnight of the date the election is held, whichever last occurs.

(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 adjourns 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.

**History.**—s. 9, ch. 18405, 1937; CGL 1940; Supp. 337(23-b); s. 7, ch. 22858, 1945; s. 5, ch. 26870, 1951; s. 30, ch. 28156, 1953; s. 24, ch. 57-1; s. 29, ch. 65-380; s. 27, ch. 77-175; s. 48; ch. 79-400; s. 15, ch. 89-348; s. 601, ch. 95-147.

**Note.**—Former s. 100.25; s. 101.57.

**102.167 Form of protest of election returns.—**

(1) 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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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)

**History.**—s. 31, ch. 28156, 1953; s. 30, ch. 65-380; s. 27, ch. 77-175.

**Note.**—Former s. 101.571.

**102.168 Contest of election.**—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 taxpayer, respectively. 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 adjourns, and 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 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.

**History.**—ss. 7, 8, Art. 10, ch. 38, 1845; RS 199; GS 283; RGS 379; CGL 444; s. 3, ch. 26870, 1951; s. 16, ch. 65-378; s. 28, ch. 77-175; s. 49, ch. 79-400; s. 602, ch. 95-147.

**Note.**—Former s. 104.06; s. 99.192; s. 102.161.

**102.1682 Judgment of ouster; revocation of commission; judgment setting aside referendum.**—

(1) If the contestant is found to be entitled to the office, if on the findings a judgment to that effect is entered, and if the adverse party has been commissioned or has entered upon the duties thereof or is holding the office, then a judgment of ouster shall be entered against such party. Upon presentation of a certified copy of the judgment of ouster to the Governor, the Governor shall revoke such commission and commission the person found in the judgment to be entitled to the office.

(2) If a judgment is entered setting aside a referendum, the election shall be void.

**History.**—s. 9, Art. 10, ch. 38, 1845; RS 201; GS 285; RGS 381; CGL 446; s. 3, ch. 26870, 1951; s. 18, ch. 65-378; s. 29, ch. 77-175.

**Note.**—Former s. 104.08; s. 99.211; s. 102.163.

**102.1685 Venue.**—The venue for contesting a nomination or election or the results of a referendum shall be in the county in which the contestant qualified or in the county in which the question was submitted for referendum or, if the election or referendum covered more than one county, then in Leon County.

**History.**—s. 3, ch. 26870, 1951; s. 17, ch. 65-378; s. 30, ch. 77-175.

**Note.**—Former s. 99.202; s. 102.162.

**102.169 Quo warranto not abridged.**—Nothing in this code shall be construed to abrogate or abridge any remedy that may now exist by quo warranto, but in such case the proceeding prescribed in s. 102.168 shall be an alternative or cumulative remedy.

**History.**—RS 203; GS 287; RGS 383; CGL 448; s. 3, ch. 26870, 1951; s. 19, ch. 65-378; s. 31, ch. 77-175.

**Note.**—Former s. 104.10; s. 99.221; s. 102.164.