Flagler County
Board of County Commissioners
Workshop
(Special Meeting to Follow)
Monday, December 4, 2017 at 1:00 p.m.
Emergency Operations Center, Building 3, 1769 E. Moody Blvd., Bunnell, FL 32110

Workshop Agenda

1. Call to Order
2. Pledge to the Flag and Moment of Silence
3. Welcome: Flagler County Board Chair
4. Waste Pro Services Discussion
5. Canvassing Board Briefing
6. Hazardous Tree Update
7. Legislative Update
8. Board Scheduling Coordination Discussion
9. Proclamation Process Discussion
10. Public Comment
11. Adjournment

While this is a workshop only and no decisions are expected to be made by any of the governmental bodies, if a person decides to appeal any matter that may be discussed for a future proceeding, a record of the workshop may be needed and, for such purposes, the person may need to ensure that a verbatim record of the workshop is made.
Flagler County
Board of County Commissioners
Special Meeting
Monday, December 4, 2017 Following Workshop
Emergency Operations Center, Building 3, 1769 E. Moody Blvd., Bunnell, FL 32110

Special Meeting Agenda

1. Call to Order
2. Public Comment
3. Request the Board take actions as deemed necessary regarding issues discussed at the workshop this date.
4. Adjournment

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.
Commissioners,

In advance of your workshop on December 4, we wanted to get this information out to you regarding the Canvassing Board. During the regular meeting later that evening, we are advised you will be picking the commissioners who will serve as a regular and an alternate member. Please do not hesitate to call if you have any questions.

Thank you,

Sean S. Moylan
Flagler County Attorney’s Office
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(386) 313-4056
SERVING ON THE COUNTY CANVASSING BOARD

Introduction
In 2018, the Flagler County Canvassing Board will canvass ballots for the primary election in August and the general election in November.

The following introduces you to the composition and duties of the Canvassing Board, as well as considerations for determining the Board of County Commissioners’ appointees to the Canvassing Board.

The Florida State Association of Supervisors of Elections (FSASE) will present an in-depth training at its Workshop in Orlando on April 20, 2018 for those individuals who will serve on the Canvassing Board as regular and alternate members. We have excerpted and attached a section from the FSASE 2016 Canvassing Board Manual that details the responsibilities of the Canvassing Board from the beginning to the end of the process.

The Flagler County Supervisor of Elections will also provide training and answer questions at the Orientation Meeting of the Flagler County Canvassing Board in April 2018.

Composition
The composition and duties of the Canvassing Board derive from Section 102.141, Fla. Stat., attached for your reference.

The Canvassing Board is composed of three statutory members: (1) a County Court Judge who chairs the Canvassing Board, (2) the Supervisor of Elections, and (3) the Chair of the County Commission. In addition, the Chief Judge of the Circuit and the Chair of the County Commission appoint another judge and another County Commissioner, respectively, as alternate members of the Canvassing Board. An alternate member’s job is to fill in if one of the regular members cannot attend a particular meeting or portion of a meeting. Alternate members may attend meetings, participate in discussions, but do not vote unless serving in place of a regular member.

If a statutory member or alternate member is unable to serve, the statute provides a series of rules for the appointment of a substitute member. For example, when the Chair of the County Commission is unable to serve because he/she is a candidate in the election to be canvassed, the Board of County Commissioners appoints another commissioner as its appointee to the Canvassing Board.

Duties
The Canvassing Board is not involved in the qualification of candidates, the printing of ballots, administering precincts and the like. The goal of the Canvassing Board is to ensure that ballots are fairly and accurately counted. Therefore, the duties of the Canvassing Board are largely ministerial in nature. They generally include: conducting a test of the tabulation equipment before the election; opening mail-in ballots; determining voter intent for incorrectly marked, provisional ballots; certifying the results
of the election; conducting recounts in close races; conducting a post-election audit of a randomly selected election race and precinct; and filing a conduct of election report with the State.

**Prohibited Activities**

Candidates facing opposition in the election to be canvassed are prohibited from serving on the Canvassing Board.

Also, a person who is an active participant in the campaign or candidacy of any candidate facing opposition in the election to be canvassed are prohibited from serving on the Canvassing Board. The Division of Elections has defined “active participant” to mean “one who undertakes an action intentionally to demonstrate or generate public support of the candidate.” It does **not** include making a monetary contribution to a candidate’s campaign by itself. However, it does include publicly endorsing a candidate, displaying a candidate’s campaign sign, or soliciting votes for a candidate. It also includes being a member of an election committee for a candidate, wearing a campaign tee-shirt, signing an endorsement card for a candidate, attending a candidate’s campaign fundraiser, or chairing an ongoing election campaign or fundraiser for a candidate. It is the responsibility of the individual member to decide for himself/herself whether he/she is disqualified from serving.

Disclosure, before 7 p.m. on election night, of the tabulation of the votes cast is a third degree felony.

**Attached Reference Materials**

FSASE 2016 Canvassing Board Manual, Section Two.

Section 102.141, Florida Statutes.

Division of Elections Opinions 08-10, 09-07, and 15-03 relating to disqualification.

(Note, there are a number of detailed Florida Administrative Code Rules under Chapter 1S-2 that involve Canvassing Board duties which are not attached because they are beyond the scope of this presentation.)
SECTION 2

SUMMARY OUTLINE OF DUTIES OF THE CANVASSING BOARD

I. Composition of the County Canvassing Board – Section 102.141, FS.

A. Membership of the board is made up of:
   1. County Court Judge, who shall act as chair
   2. Supervisor of Elections
   3. Chair of the Board of County Commissioners
   4. Alternate County Court Judge (or qualified elector) s. 102.141(1)(e)1., FS.
   5. Alternate County Commissioner (or qualified elector) s. 102.141(1)(e)2., FS.

B. Substitutes if the above are unable to serve – Section 102.141(1)(a-e), FS.
   1. If no County Judge can serve:
      a. The Chief Judge of the judicial circuit in the county shall appoint as a substitute a qualified elector of the county who:
         (1) Is not an opposed candidate and
         (2) Who is not actively participating in the campaign of an opposed candidate in the election.
      b. If an elector is appointed, the board will meet to elect a chairman
   2. If the Supervisor of Elections is unable to serve:
      a. The chair of the Board of County Commissioners shall appoint as a substitute member of the Board of County Commissioners
         (1) Who is not an opposed candidate or
         (2) Who is not an active participant in the candidacy of someone on the ballot for the election.
      b. The Supervisor of Elections shall act in an advisory capacity.
   3. If the Chair of the Board of County Commissioners is unable to serve, the Board of County Commissioners shall appoint as a substitute another member of the board:
      a. Who is not an opposed candidate or
      b. Who is not an active participant in the campaign of someone on the ballot for the election.
   4. If a substitute member or alternate member cannot be appointed as provided above, the Chief Judge shall appoint, as a substitute or alternate member a qualified elector of the county:
      a. Who is not an opposed candidate in the election or
      b. Who is not an active participant in the campaign of someone on the ballot for the election.

If a canvassing board member is unable to participate in a meeting of the board, the Chairman or his/her designee must designate which alternative member will serve as a member of the board in their place. When not serving, an alternate may be present, observe and communicate with the canvassing board members but may not vote in decisions.

C. Clerical Assistant – Section 102.141(8), FS.
   1. The canvassing board may employ clerical help as needed with at least one
member of the board present at all times until the canvass of returns is completed.
2. The clerical help shall be paid from the same fund as pollworkers, inspectors and other necessary election officials.

*Suggestion: It is the strongest recommendation of the FSASE that each canvassing board secure good legal counsel – an attorney who is familiar with case law, election statutes, public records law, etc.*

II. Testing of Voting Systems – Section 101.5612, FS.

A. Prior to the Public Test – s. 101.5612(1), FS.
   1. All electronic or electromechanical voting systems shall be thoroughly tested at the conclusion of maintenance and programming.
   2. Tests must determine that the voting system is properly programmed, that the election is correctly defined, and that all the voting system input, output, and communication devices are working properly.

B. Preparing for the Public Test – s. 101.5612(2), FS.
   1. On any day not more than 10 days before early voting starts, the voting equipment must be tested publicly.
      a. The canvassing board shall convene to conduct a publicly noticed pre-election test of the voting equipment.
      b. Each member of the canvassing board shall certify to the accuracy of the test although the canvassing board may designate one member to represent it.
      c. If the polling place ballots are not ready at the time of the public test for early voting, another test may be conducted not more than 10 days before Election Day.
   2. Public notice of the time and the place must be given at least 48 hours prior to the meeting:
      a. Post on the Supervisor of Elections’ website
      b. Publish once in one or more newspapers of general circulation in the county. If there is no such newspaper, notices must be posted in four conspicuous places in the county.
   3. The Supervisor of Elections or Municipal Elections Official may, at the time of qualifying, give each candidate a copy of the notice specifying the time and place of the public test and obtain written receipt from the candidate for the notice.
   4. The Department of State shall give each statewide candidate a written notice informing the candidate that the voting equipment will be tested and advising the candidate to contact the Supervisor of Elections for the time and place of the tests.
   5. The Supervisor of Elections or Municipal Elections Official shall, at least 15 days before early voting starts, give written notice via certified mail to the county party chair of each political party and to all candidates for other than statewide office whose names appear on the ballot in the county and who did not receive written notification at the time of qualifying, stating the time and place of the public test.
   6. The test shall be open to representatives of the political parties, the media, and the public. Each political party may designate one person with expertise in the computer field who shall be allowed in the central counting room when all tests are being conducted. Such designee shall not interfere with the normal operation of the canvassing board.

C. Conducting the Public Test – s. 101.5612, FS.
1. For electronic or electromechanical voting systems configured to tabulate absentee ballots at a central or regional site (s.101.5612(3),(5) FS):
   a. The public testing shall be conducted by processing a pre-audited group of ballots through the tabulating equipment.
      (The test ballots must consist of actual ballots pre-printed for the election, or if ballot-on-demand ballots will be used, create test ballots using the ballot-on-demand technology and same paper stock as will be used for election ballots, likewise hybrid ballots used for ADA)
   b. The ballots must have been marked so as to produce a pre-determined outcome for each candidate or measure of the ballot.
   c. The test ballots must include one or more which have activated voting positions in excess of those allowed in order to test the ability of the equipment to reject such ballots.
   d. If an error is found during the test:
      (1) Correct the cause of the error.
      (2) Make an errorless count before the tabulating equipment is approved.
      (3) Repeat the test and obtain errorless results immediately before the count of the ballots and again after the completion of the official count.
      (4) Seal the programs and ballots used for testing and they shall be retained in the custody of the county canvassing board.

2. For electronic or electromechanical voting systems configured to include electronic or electromechanical tabulation devices which are distributed to the precincts (s. 101.5612(4)(a), FS.).
   a. Test all or a sample of the devices.
   b. If a sample is to be tested, randomly select:
      (1) At least 5 percent or 10 of the devices for an optical scan system, whichever is greater
      (2) For touchscreen systems a sample of at least 2 percent of the devices must be tested
   c. Conduct the test by processing a group of ballots through the voting equipment, obtaining the results, and comparing the results of the test to the anticipated results.
   d. Mark the group of ballots used for the test so as to record a pre-determined number of valid votes for each candidate and on each measure and to include for each office one or more ballots which have activated voting positions in excess of the number allowed by law in order to test the ability of the voting equipment to reject such ballots.
   e. If an error is found in any tabulation device during the test – Section 101.5612(4)(a)2, FS.:
      (1) It shall be deemed unsatisfactory and for each such device the canvassing board shall:
         − Take steps to determine the cause of the error,
         − Attempt to identify and test other devices that could reasonably be expected to have the same error, and
         − Test a number of additional devices sufficient to determine that all devices are satisfactory.
      (2) Upon deeming any device unsatisfactory, the canvassing board may require all devices to be tested or may declare that all devices are unsatisfactory.
   f. If the operation or output of any tested tabulation device, such as spelling or the order of the candidates on a report is in error, such problem shall be reported to the canvassing board. The canvassing board shall then determine
if the reported problem warrants it’s deeming the device unsatisfactory.
  s101.5612(4)(a) 3, FS.

D. At the conclusion of the test – s. 101.5612(4)(b)-(e), FS.
   1. The canvassing board or its representative, the representatives of the political parties, and the candidates or their representatives who attended the test shall witness the resetting of each device that passed to a pre-election state of readiness and the sealing of each device that passed in such a manner as to secure its state of readiness until the opening of the polls.
   2. The Canvassing Board or its representative shall execute a written statement specifying
      a. The devices that were tested
      b. The results of the testing
      c. The protective counter numbers, if applicable
      d. The number of the seal securing each device when the test is concluded
      e. Any problems reported to the board
      f. Whether or not each device tested is satisfactory or unsatisfactory
   3. Any device deemed unsatisfactory shall be recoded, repaired or replaced and made available for retesting. Such device must be deemed satisfactory by the canvassing board or its representative prior to being used in an election. At the conclusion of the first test, the canvassing board must announce the date, time and place of any retesting. As an alternative, the canvassing board may phone any person who was present at the first test to give notice of the retesting.
   4. Records must be kept of all pre-election testing of electronic or electromechanical tabulation devices used in any election. They must be available during the public test for anyone who wishes to inspect them. However, the needs of the canvassing board will take precedence over the needs of other attendees to access such records so the board’s work is not delayed or hindered.
      a. Records must include, for each device
         (1) The name of the person who tested the device
         (2) The date, time and place of test
         (3) The results of the test
      b. These records are part of the official records of the election

III. Canvassing the Absentee Vote – Sections 101.68, 102.141, 101.6923 5.c. and 101.5614(5), FS.
   A. Prior to the canvass
      1. The Supervisor of the county where the absentee elector resides shall receive the voted ballot and compare the signature on the voter’s certificate or absentee ballot affidavit with that on file in the registration books or precinct register. (By law, a voter has only until the start of canvassing-- which could begin as early as 15 days before Election Day—to submit a signature update for purposes of a signature comparison between a ballot certificate and record).
      2. The Supervisor of Elections shall safely keep the ballot unopened until the county canvassing board canvasses the vote.

Suggestion: If the canvassing board has conducted an orientation meeting and adopted a set of criteria that will be used for canvassing the absentee ballots, the Supervisor of Elections staff can pre-sort the absentee ballots in categories based on the criteria adopted by the board. This will make the actual canvass of the ballots much smoother and quicker.
B. Preparing for the canvass of the absentee ballots:

1. Determine the time of the meeting – s. 101.68(2)(a), FS.
   a. The board may begin as early as 7 a.m. on the 15th day before the election.
   b. The board must begin no later than noon of the day following the election.
2. Determine where the meeting will take place – s. 102.141(2), FS. The board must meet in a building accessible to the public.
3. Publicize the time and place of the meeting by posting notice on the supervisor of elections website and in a newspaper of general circulation at least 48 hours in advance – s. 102.141(2), FS.

C. Canvassing the absentee ballots.

1. Account for all ballots to be canvassed – s. 101.68(2)(b), FS. The board must compare the number of ballots in its possession to the number of requests for absentee ballots according to the Supervisor’s records.
2. Compare the signatures on the voter’s certificate – s. 101.68(2)(c)1., (4)(a)-(f), FS. If the Supervisor of Elections has not already done so, the board will compare the signatures on the voter’s certificate or absentee ballot affidavit as provided in subsection (4) with that on file in the registration books or precinct register.
3. Until 5 p.m. on the day before an election, the supervisor shall allow an elector who has returned an absentee ballot that does not include the elector’s signature to complete and submit an affidavit in order to cure the unsigned absentee ballot. s. 101.68(4)(b), FS.
4. The elector shall provide identification to the supervisor and must complete an absentee ballot affidavit as prescribed in s. 101.68(4)(c) – (d), FS.
5. The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office’s mailing address, e-mail address, and fax number on the page containing the affidavit instructions; the department’s instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.
6. The supervisor shall attach each affidavit received to the appropriate absentee ballot mailing envelope.
7. Determine the legality of the ballot s. 101.68(2)(c)1., FS. If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope “Rejected as Illegal.”

D. Dealing with challenges to the absentee ballots – s. 101.68(2)(c)2., FS. Any elector or candidate may protest against the canvass of a ballot that the elector or candidate believes is illegal due to a defect apparent on the voter’s certificate.

1. The protest must be filed before the ballot is removed from the envelope.
2. The protest must be specific as to the ballot being challenged, the precinct, and the reason for such challenge.

E. Processing the ballots following the canvass:

1. Record the outcome of each ballot canvassed – s. 101.68(2)(d), FS.
2. Open the mailing envelopes.
3. Mix the secrecy envelopes so it is impossible to determine which secrecy envelope came out of which signed mailing envelope. (Alternatively the secrecy envelopes and/or ballot may be sorted by ballot style, and the secrecy envelopes mixed by ballot style).

4. Tabulate the ballots and add the results to the total vote in the county.

F. Duplicating an absentee ballot is required as follows:

1. When an absentee ballot is physically damaged and cannot be properly counted by the tabulating equipment – s. 101.5614(5)(a), FS.:
   a. A true duplicate copy of the damaged ballot must be made in the presence of witnesses.
   b. The duplicate ballot shall be clearly labeled “duplicate” and must bear a serial number which shall be recorded on the defective or damaged ballot.
   c. Once duplicated, the defective ballot is placed in an envelope provided for that purpose and the duplicate ballot is processed and tallied with the other ballots.

2. When an absentee ballot contains an overvoted race or is marked so that every race is undervoted:
   a. A duplicate ballot shall be made containing all valid votes as determined by the canvassing board in accordance with Rule 1S-2.027, FAC.
   b. The duplicate ballot shall be clearly labeled “duplicate”, and must bear a serial number which shall be recorded on the defective or damaged ballot.
   c. Once duplicated, the defective ballot is placed in an envelope for that purpose and the duplicate ballot is processed and tallied with other ballots for that precinct.

Note: The tabulation equipment “overvote” and “blank ballot” sort options should be enabled prior to tabulating absentee ballots. The Canvassing Board will then be presented with the overvoted and blank ballots to canvass in accordance with Rule 1S-2.027 and 1S-2.030(8)(b-d), FAC.

3. When a federal write-in absentee ballot (FWAB) is to be canvassed – s.101.6952 and 101.5614(5)(b), FS; Rules 1S-2.030(4) – (5) and 1S-2.051, FAC. (See also Section XV, C-D):
   a. FWAB may not be canvassed until 7 p.m. on election day unless FWAB is from an overseas voter in a PPP or General election – in which case, the ballot may not be canvassed until 10 days after the date of the election.
   b. If the elector’s official absentee ballot is received by 7 p.m. on election day, or, for an overseas voter in a PPP or General election, no later than 10 days after the date of the election, the federal write-in absentee ballot is invalid and the official absentee ballot shall be canvassed.
   c. A true duplicate copy must be made of each FWAB in the presence of witnesses and substituted for the FWAB.

G. Tabulating the absentee ballots before the polls close on election day s.101.68(2)(a), FS.

1. In counties using electronic tabulating equipment, the absentee ballots may be processed through the tabulating equipment beginning at 7 a.m. on the 15th day prior to the election.
2. No results from the absentee ballots shall be released until after the closing of the polls in that county on election day.

_Warning!_ Any supervisor of elections, deputy supervisor of elections, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of absentee ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083 or s.775.084, FS.

H. Custody of the absentee ballots – s. 101.68(3), FS. The Supervisor of Elections or chair of the canvassing board shall have custody of the absentee ballots until a final proclamation is made as to the total vote received by each candidate.

I. Following the election – s.101.68 (4)(a), FS. The supervisor of elections shall, on behalf of the county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected. The supervisor shall mail a voter registration application to the elector to be completed indicating the elector’s current signature if the elector’s ballot was rejected due to a difference between the elector’s signature on the voter’s certificate or absentee ballot affidavit and the elector’s signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector’s signature.

_Electronic Transmission of election materials – s.101.697, FS., Florida law allows for the return of an absentee ballot via facsimile from overseas voters. The deadline for the return of such ballots is the close of the polls on Election Day. Rule 1S-2.030, FAC gives the specific and special procedures to be followed by the canvassing board when canvassing these ballots._

IV. Canvassing Special Absentee Ballots for Certain First Time Voters – Sections 101.6921, 101.6925, FS.

Voters who registered to vote by mail and are first time voters in the state, and who have never been issued a Florida driver’s license or state identification card, or a social security number, are required to provide a copy of a current and valid identification (ID) as outlined in s. 97.0535, FS., with their registration or at any time prior to voting for the first time in the state.

A. If such voter chooses to vote absentee but has not provided the Supervisor of Elections with the copy of the ID or certification by the time the absentee ballot is mailed, a copy of a valid ID must be included in the outside mailing envelope along with the certificate envelope containing the absentee ballot. The only exception is if such voter is exempt from this requirement because he or she: a) is 65 years or older, b) is a UOCAVA voter (absent from the county stateside, absent overseas uniformed services member, Merchant Marine or family member, or a U.S. citizen residing outside the US), or c) is a person who is permanently or temporarily disabled.

B. When the special absentee ballot is received from such voter, the Supervisor of Elections will open the mailing envelope to determine if the voter has enclosed a valid ID or if the
voter has indicated on the voter’s certificate that the voter is exempt from such requirement.

1. If the voter has complied with the ID requirement, the special absentee ballot will be processed along with the other non-special absentee ballots.

2. If the voter has NOT complied with the requirements, the special absentee ballot shall be treated as a provisional ballot until 7 p.m. on Election Day and shall not be canvassed unless the voter complies with the ID requirements.

**WARNING!** According to the Division of Elections, under no circumstances should any envelope other than the mailing envelope be opened in the case of a special absentee ballot even if it is readily apparent that the voter has enclosed identification in the certificate envelope along with the ballot. The statutory instructions to the voter are very clear that if the identification is enclosed in the envelope with the ballot, the ballot will not be counted. (s.101.6923(2)8., FS.)

V. Canvassing the Ballots for Early Voting – Section 101.657, FS.

A. At a minimum, early voting shall begin on the 10th day before an election, the Supervisor shall allow an elector to cast a ballot by depositing the voted ballot in a voting device. The tabulators used for early voting must be tested publicly – s.101.5612(2), FS.

B. If the elector does not have the required identification (s.101.048 FS.)
   1. The elector shall be allowed to vote a provisional ballot.
   2. The canvassing board shall compare the signature on the provisional ballot envelope with the signature on the voter’s registration and, if the signature matches, shall count the ballot.

C. The results or tabulation of early voting ballots may not be made public before the close of the polls on election day. (s.101.5614(9) FS.)

D. The canvass of returns for ballots cast under this section shall be substantially the same as votes cast by electors in precincts as provided in s. 101.5614, FS.

VI. Canvassing Write-In Votes – Rule 1S-2.0031, FAC.

A. Write-in vote means either a handwritten name of a candidate or the name of a candidate which has been input on a direct recording device (touchscreens/hybrid systems).
   1. Write-in votes come from the precinct and early voting.
   2. Write-in votes come from the absentee ballots and provisional ballots.

B. Unless the canvassing board is required to determine voter intent pursuant to s.101.5614(4), FS (duplicate of FWAB) or s. 102.166(4), FS. (manual recount) a write-in vote shall only count on an optical scan ballot if the oval or arrow next to the write-in space is filled in – Rule 1S-2.027(3)(b). Any abbreviation, misspelling, or minor variation in the form of the name must be disregarded when determining the validity of a write-in vote.
VII. Canvassing the State Write-In Ballot – Section 101.6951, FS. and Rule 1S-2.028, FAC.

A State Write-In Ballot is a ballot that only an overseas voter can request in a general election if he or she is not going to be able to receive an absentee ballot during the normal mail delivery period for absentee ballots because of military or other contingencies.

A. This ballot may be requested no earlier than 180 days before a general election, and must be made available 90 to 180 days prior to a general election.
B. The form of the ballot is prescribed by Rule – 1S-2.028 FAC and shall contain all offices, federal, state and local for which the voter would otherwise be entitled to vote.
C. The overseas voter may designate his or her choices as follows:
   1. By writing the name of the candidate OR
   2. By writing the name of a political party, in which case the ballot must be counted for the candidate of that party if there is such a party candidate on the ballot.
D. Any abbreviation, misspelling or other minor variation in the form of the name of the candidate or political party must be disregarded.

VIII. Canvassing the Returns From the Polls – Section 102.141(2) – (3), FS.

A. The meeting must be publicly noticed and must be held in a building accessible to the public.
B. The results of ballots tabulated at the precincts may be transmitted to the main computer system for the purpose of compilation of complete returns – s.101.5614(3), FS.
C. The canvass, except the canvass of absentee electors’ returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor and the canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure in any polling place as shown by the returns.
D. All returns from the precincts must be submitted to the board on or before 2 a.m. of the day following any primary, general, or other election. s. 102.141(3), FS.
   1. If the returns from any precinct are missing, OR
   2. If there are any omissions on the returns from any precinct, OR
   3. If there is an obvious error on any such returns, THEN
      a. The canvassing board shall order a re-tabulation of the returns from such precinct.
      b. Before canvassing such returns the canvassing board shall examine the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast.
      c. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.
E. Returns from counties that transmit results from regional locations via dedicated teleprocessing lines to the main computer system for compilation must: (before the final results are filed by the canvassing board per Rule 1S-2.016(3)
   1. Reconcile received tabulations to transmitted tabulations
2. Conduct a race by race comparison by precinct of the received tabulation to tabulation report produced from the original transmitted data.

IX. Canvassing the Provisional Ballots – Section 101.048, FS. and Rule 1S-2.037, FAC

Provisional ballot voters include but are not limited to voters who claim to be registered but for whom eligibility cannot be established, voters who the election official asserts are not eligible, and voters who are registered but do not bring proper identification at the time of voting. Each person casting a provisional ballot must complete a provisional ballot voter’s certificate and affirmation, including voters who vote provisionally by electronic means. The reason(s) for why a voter voted provisionally should be indicated on the provisional ballot envelope. Rule 1S-2.037(3)(b)3.

A. Until canvassed, all provisional ballots from the polls shall remain sealed in their envelopes for return to the Supervisor of Elections office.

B. A person casting a provisional ballot has the statutory right to present written evidence supporting his or her eligibility to vote to the supervisor of elections by not later than 5 p.m. on the second day following the election. It is up to the voter whether he or she will bring in further evidence of eligibility. However, the following category of provisional ballot voters do not have to bring in further evidence of their eligibility in order for their ballot to count, provided they are registered and otherwise determined to be eligible:
   1. Voters who voted provisionally because they did not provide an acceptable photo and/or signature identification.
   2. Voters who voted provisionally because they made an out-of-county address change.

C. The canvassing board shall review the information on the provisional ballot envelope and all information provided by the Supervisor’s Office, evidence provided by the voter, if any, and in the case of a voter challenge, any evidence provided by the challenger:
   1. Determine if the person is registered in the Florida Voter Registration System.
   2. Determine if the person voted in the proper precinct.
   3. Verify the signature on the certificate as belonging to the voter by comparing it with the signature on file.
   4. Confirm that the person has not already voted either absentee or during early voting.

D. The canvassing board shall count a provisional ballot if the voter is registered and otherwise determined to be eligible to vote pursuant to subsections B, and C, unless the board determines by a preponderance of the evidence that the voter is not.

E. Special procedures apply for canvassing provisional ballots cast on the Sequoia Touch Screen when the canvassing board determines that the person is registered and eligible to vote: Rule 1S-2.037, FAC
   1. The provisional ballot envelope shall be opened and the provisional ballot number shall be separated from the envelope containing the voter’s name to ensure no connection between the name and the ballot number.
   2. All ballots connected to the provisional ballot numbers for eligible voters shall be tabulated according to the procedures for tabulating ballots provided by the manufacturer.

F. If the canvassing board determines by a preponderance of evidence that the person is not registered or entitled to vote at the precinct where the person cast a vote in the election:
1. The provisional ballot shall not be counted and shall remain unopened AND
2. Will be marked “Rejected as Illegal.”

X. Canvassing the Provisional Ballots Cast in Special Circumstances – Section 101.049, FS.

Any person who votes after the regular poll-closing time pursuant to a court order or other order extending the polling place hours must vote a provisional ballot.

A. The election official witnessing the voter’s affirmation shall indicate whether or not the voter met all requirements to vote a regular ballot at the polls.
B. All such provisional ballots shall remain sealed for return to the Supervisor’s office.
C. The canvassing board shall count all late-voted provisional ballots that are determined to be valid, but must keep such ballots separate and apart from all other ballots.
D. The Supervisor of Elections shall ensure that the late voted provisional ballots are not commingled with other ballots during the canvassing process or at any other time they are statutorily required to be in the Supervisor’s possession.

XI. Submitting Preliminary Returns – Section 102.141(4), FS.

A. The Supervisor of Elections shall upload into the county’s election management system by 7 p.m. on the day before the election the results of all early voting and absentee ballots that have been canvassed and tabulated by the end of the early voting period.
B. Pursuant to s. 101.5614(9), 101.657(1)(a), and 101.68(2)(a), the tabulation of votes cast or the results of such uploads may not be made public before the polls close on Election Day.
C. The canvassing board shall report all early voting and all tabulated absentee results to the Department of State within 30 minutes after the polls close.
D. Thereafter the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported.
E. The Supervisor of Elections shall notify the department immediately of any circumstances that do not permit periodic updates as required.
F. Results shall be submitted in a format prescribed by the department.

XII. Submitting the Unofficial Count – Section 102.141(2); (5); (6), FS.

A. The canvassing board shall submit unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure no later than noon on the third day after any primary election and no later than noon of the fourth day after any general or other election. Such returns shall include the canvass of all ballots as required. INCLUDED ARE:
   1. Polling place and early voting returns
   2. Absentee returns
   3. Write-in votes, if any
   4. Provisional ballots
B. If the county canvassing board determines that the unofficial returns may contain a counting error in which the vote tabulation system failed to count votes that were properly marked in accordance with the instructions on the ballot, the county canvassing board shall
1. Correct the error and re-tabulate the affected ballots with the vote tabulation system; OR
2. Request that the Department of State verify the tabulation software.

XIII. Machine Recount Procedures – Section 102.141(7) FS. and Rule 1S-2.031, FAC.

(Revision pending at time of print)

A. If the first set of unofficial returns indicates that a candidate or measure was defeated or eliminated by one-half of a percent or less of the votes cast for such office or measure, the board responsible for certifying the results of the vote shall order a machine recount of the vote with respect to such office or measure. (The Secretary of State is responsible for ordering recounts in federal, state and multicounty races). No recount can begin until the recount is ordered. All procedures shall be open to the public. At least 2 members of the canvassing board shall be present at all times.

B. No recount is required if the candidate or candidates defeated or eliminated in the contest request in writing that such recount not be made.

C. The board shall notify the candidates or committees in the affected race or races that a machine recount will be conducted. If the recount is ordered by the Elections Canvassing Commission, the Division of Elections shall notify the candidates or committees. In addition, notice of all machine recounts shall be posted on the door of the public entrance to the building where the office of the supervisor of elections is housed so that the notice is accessible to the public 24 hours a day.

D. For marksense ballots, each canvassing board shall put each ballot back through the automatic tabulating equipment and determine whether the returns correctly reflect the votes cast.
   1. If any paper ballot is damaged so that it cannot be properly counted by the automatic tabulating equipment, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(5), FS.
   2. Immediately prior to recounting ballots and immediately following the recount, the voting equipment must be tested pursuant to s. 101.5612, FS.
   3. If the test indicates no error, the recount tabulation of the ballots shall be presumed correct and such votes canvassed accordingly.
   4. If an error is detected, the cause shall be ascertained and corrected and the recount repeated, as necessary.
   5. The canvassing board shall immediately report the error, the cause of the error, and the corrective measures being taken to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error.

E. For touchscreen ballots, each canvassing board shall examine the counters on the precinct tabulators to ensure that the total of the returns on the precinct tabulators equals the overall election return. If there is a discrepancy between the overall election return and the counters, the counter of the precinct tabulators shall be presumed correct and such votes shall be canvassed accordingly.

F. The board shall submit a second set of unofficial returns to the Department of State no later than 3 p.m. on the fifth day after any primary election and no later than 3 p.m. on the ninth day after any general election in which a recount was conducted pursuant to s.102.141(7)(c), FS.

G. If the board is unable to complete the recount by deadline, the second set of unofficial returns submitted by the canvassing board shall be identical to the initial unofficial returns and shall include a detailed explanation of why it was unable to timely complete the recount.

H. The canvassing board must complete the recount along with any manual recount
prescribed in s. 102.166, FS. and Rule 1S-2.031, FAC and certify the election results.

XIV. **Manual Recounts Procedures – Section 102.166, FS., and Rules 1S-2.027 and 1S-2.031 (Revision pending at time of print), FAC.**

A. If the second set of unofficial returns indicates that a candidate or measure was defeated or was eliminated by one-quarter of a percent or less of the votes cast for the office, the board responsible for certifying the results of such contest must order a manual recount of the overvotes and the undervotes cast in the entire geographic jurisdiction of such office or ballot measure. The Secretary of State is responsible for ordering a manual recount for federal, state and multicounty races.

B. A manual recount may not be ordered:
   1. If the number of overvotes and undervotes, is fewer than the number of votes needed to change the outcome of the election OR
   2. If the candidate(s) defeated or eliminated from contention by one-quarter or fewer of the votes cast for the office request in writing that a recount not be made.

C. Rule 1S-2.031, FAC (Revision pending at time of print), prescribes in detail manual recount procedures for each certified voting system.
   1. Any manual recount shall be open to the public. At least 2 members of the canvassing board shall be present during all times.
   2. The board responsible for ordering the recount 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 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. In addition, the 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, FS. The notice shall be in either a newspaper of general circulation in the county or posted in at least 4 conspicuous location in the county. 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.
   3. 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 s. 102.166, FS.
   4. Prior to the beginning of the manual recount, the county canvassing board, the members of the counting teams and the representatives entitled to be present, shall jointly review the rules and statutes governing recount procedures and what constitutes a clear indication that the voter has made a definite choice. 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.
   5. The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots.
   6. 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 team.
   7. Each duplicate ballot prepared pursuant to s. 101.5614(5) or s. 102.141(7), FS. shall be compared with the original ballot to ensure the correctness of the duplicate.
8. If a counting team is unable to determine whether a ballot contains clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for determination.

D. The canvassing board must determine whether a ballot clearly indicates a voter has made a definite choice as to a candidate or measure pursuant to s. 102.166, FS. and Rule 1S-2.027 in order to count the ballot.

XV. Canvassing the Ballots from UOCAVA Voters.

A. Canvassing the UOCAVA ballot for Overseas Voters (Rule 1S-2.030, FAC)

1. An overseas voter may return a voted ballot by:
   a. Facsimile
   b. Mail
   c. In person
   d. Through someone else on behalf of the voter

2. An overseas voter is allowed a 10 day extension when casting a ballot for the Presidential Preference Primary or General Election. Refer to section C.

3. An overseas voter returning a ballot by facsimile must:
   a. Send the ballot and the Voter's Certificate directly to the fax number provided by the Supervisor of Elections or
   b. Send to a fax number provided by the Federal Voting Assistance Program of the Department of Defense.

4. An overseas voter returning a ballot by mail that was initially received by electronic mail or facsimile must:
   a. Seal the ballot in an unmarked envelope, which is the security envelope
   b. The Voter’s Certificate and the security envelope should be placed in a separate ballot transmittal envelope for mailing
   c. Mark the transmittal envelope “Absentee Ballot Enclosed”

5. If the returned absentee ballot for an overseas voter is received by facsimile the Supervisor of Elections shall:
   a. Enclose the ballot in an envelope and seal it for secrecy.
   b. The Voter’s Certificate shall be attached to the envelope.
   c. Upon determination by the canvassing board that the voter was eligible to vote, the ballot shall be duplicated so that it can be processed through the tabulation equipment.

6. Upon receipt by mail of a voted absentee ballot that was originally sent via electronic mail or facsimile to an overseas voter the supervisor shall:
   a. Review the Voter’s Certificate
   b. Upon determination by the canvassing board that the voter was eligible to vote, the ballot shall be duplicated so that it can be processed through the tabulation equipment.

7. If an absentee voter returns the voted ballot to the Supervisor of Elections in an envelope other than an absentee ballot mailing envelope provided by the supervisor, the canvassing board is authorized to open the mailing envelope to determine if the Voter’s Certificate is enclosed in the mailing envelope. If the Voter’s Certificate is not enclosed, the secrecy envelope containing the ballot shall not be opened and the envelope shall be marked “Rejected as Illegal”. If the Voter’s Certificate is enclosed, the Supervisor of Elections shall verify the voter’s eligibility and once verified the ballot shall be processed as other absentee ballots.
B. Canvassing the UOCAVA ballot for ABSENT Stateside Uniformed Services Voters - Rule 1S-2.030, FAC.

1. An absent stateside uniformed services voter may return a voted ballot by:
   a. Mail
   b. In person OR
   c. Through someone else on behalf of the voter

2. An absent stateside uniformed services voter:
   a. **May not** return a voted ballot by e-mail or fax. If the ballot is returned by e-mail or fax it shall not be accepted.
   b. A voted ballot must be received by the Supervisor of Elections no later than 7 p.m. on election day in the time zone for the county in which the absent uniformed services voter is registered.

3. If an absentee voter returns the voted ballot to the Supervisor of Elections in an envelope other than an absentee ballot mailing envelope provided by the supervisor, the canvassing board is authorized to open the mailing envelope to determine if the Voter’s Certificate is enclosed in the mailing envelope. If the Voter’s Certificate is not enclosed, the secrecy envelope containing the ballot shall not be opened and the envelope shall be marked “Rejected as Illegal.” If the Voter’s Certificate is enclosed, the Supervisor of Elections shall verify the voter’s eligibility and once verified the ballot shall be processed as other absentee ballots.

C. Canvassing the Ballot for Overseas Voters for Ten Days after the Election s. 101.6952, 102.141(2), FS. and Rule 1S-2.013, FAC.

1. Overseas electors whose absentee ballots are not received by the Supervisor of Elections by 7 p.m. on Election Day are entitled to have their votes counted for all offices if the ballots are postmarked or signed and dated by Election Day and received by the Supervisor of Elections no later than 10 days from the date of the election. (*Presidential Preference and General Elections Only*)

2. There is a presumption that the envelope was mailed on the date stated on the outside of the return envelope regardless of the absence of a postmark on the mailed envelope or the existence of a postmark date that is later than the date of the election, s.101.6952(4), FS.

3. The canvassing board will meet in a publicly noticed meeting to canvass these ballots and the results are included in the final certification.

D. Canvassing the Federal Write-In Absentee Ballot (FWAB); s.101.6952(2), FS.

1. The FWAB is an emergency back-up ballot that any absentee uniformed services voter or overseas voter can use when he or she does not timely receive the official absentee ballot that he or she previously requested.

2. The FWAB can be used to vote in any election and in any race for federal, state or local office—including judicial merit retention races and amendments or other ballot initiatives.

3. A voter may designate a choice on the FWAB as follows:
   a. In an election for federal office a voter may designate a candidate by:
      (1) Writing the name of the candidate on the ballot OR
      (2) Except for a primary or a special primary election the voter may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race.
b. In an election for state or local office, a voter may vote in the section of the FWAB designated for nonfederal office by:
   (1) Writing the title of each office or race AND
   (2) Writing the name of the candidate or
   (3) Except for a primary, special primary or nonpartisan office:
       Writing the name of a political party (A written designation of the political party shall be counted as a vote for the candidate of the party if there is such a party candidate in the race).

c. In the case of a joint candidacy, a valid vote for one or both qualified candidates on the same ticket shall constitute a vote for the joint candidacy.

d. When a candidate is affiliated with a political party whose name includes the word “Independent”, “Independence”, or similar term, a voter designation of “No Party Affiliation” or “Independent,” or any minor variation, misspelling or abbreviation thereof shall be considered a designation for the candidate, other than a write-in candidate who qualifies to run in the race with no party affiliation. If more than one candidate qualifies to run with no party affiliation, the designation shall not count for any candidate unless there is a valid, additional designation of the candidate’s name.

e. Any abbreviation, misspelling or other minor variation in the form of the name of an office, candidate, or political party must be disregarded in determining the validity of the ballot.

f. The elector may vote on any ballot measure presented in such election by identifying the ballot measure on which he or she desires to vote and specifying his or her vote on the measure. For the purposes of this section, a vote cast in a judicial merit retention election shall be treated in the same manner as a ballot measure in which the only allowable responses are “Yes” or “No.”

4. For absent Stateside Uniformed Service voters, a FWAB may not be canvassed until 7 p.m. on the day of the election. Each FWAB received by 7 p.m. shall be canvassed pursuant to s.101.5614(5), FS and s. 101.68, FS unless the voter’s official absentee ballot is received by 7 p.m. on Election Day.

   a. If the voter’s official absentee ballot is received by 7 p.m. on Election Day, the FWAB is invalid and the official absentee ballot shall be canvassed
   b. The time shall be regulated by the customary time in standard use in the county seat of the locality.

5. For absent overseas voters, a FWAB in a presidential preference primary or general election may not be canvassed until the conclusion of the 10-day period specified in section C 1.

   a. If the voter’s official absentee ballot is received by the normal mail delivery time on the 10th day following election day the FWAB is invalid and the official absentee ballot shall be canvassed.

6. A true duplicate copy shall be made of each FWAB in the presence of witnesses and substituted for the FWAB. The duplicate must:

   a. Include all valid votes as determined by the canvassing board based on rule 1S-2.051, FAC
   b. Be marked “duplicate” AND
   c. Bear a serial number that shall be recorded on the FWAB AND
d. Be counted in lieu of the FWAB

e. After the ballot has been duplicated, the FWAB shall be placed in an envelope provided for that purpose and the duplicated ballot shall be tallied with other ballots for that precinct.

XVI. Certifying the Returns – Section 102.112, FS.

A. Deadline for Returns

1. County canvassing board or a majority thereof shall file returns for a federal or state officer with the Department of State immediately after certification of election results.
   a. Returns must be filed by 5 p.m. on the 7th day following a primary election.
   b. Returns must be filed by noon on the 12th day following a general election.

2. Late Returns
   a. If the returns are not received by the department by the time specified, such returns shall be ignored and the results on file at that time shall be certified by the department.
   b. If the returns are not received by the department due to an emergency, as defined in s. 101.732, FS, the Elections Canvassing Commission shall determine the deadline by which the returns must be received.

B. Certified Returns must include the following: s.101.5614(8), FS.

1. The returns printed by the automatic tabulating equipment (precinct and early voting returns) to which has been added
   a. The returns of write-in
   b. The absentee returns
   c. Any manually counted votes (may include the 10 day ballots from overseas voters)
   d. Votes from provisional ballots

2. Rule 1S-2.016, FAC – Returns from counties that transmit results from regional locations via dedicated teleprocessing lines to the main computer system for compilation. Before the final results are filed by the canvassing board, the board must:
   a. Reconcile received tabulations to transmitted tabulations.
   b. Conduct a race by race comparison by precinct of the received tabulation to a tabulation report produced from the original transmitted data.

C. Form of Certification s. 102.151,FS.

1. The county canvassing board shall make and sign duplicate certificates containing
   a. Total number of votes for each person nominated or elected
   b. The names of persons for whom such votes were cast
   c. The number of votes for each candidate or nominee

2. The Supervisor of Elections shall maintain one copy and immediately transmit one copy to the Department of State.

3. The supervisor shall transmit to the department, 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.

D. At the same time that the official 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, s. 102.141(9), FS.
XVII. Audit of Voting System – Section 101.591, FS. and Rule 1S-5.026, FAC.

A. Immediately following the certification of each election, the canvassing board shall conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.

B. The manual audit shall:
   1. Consist of a public manual tally of the votes cast in one randomly selected race that appears on the ballot.
   2. Include a tally sheet of Election Day, absentee, early voting, provisional and overseas ballots in at least 1%, but no more than 2% of precincts randomly chosen by the canvassing board.
   3. Be conducted in at least one precinct, even if 1% is less than one entire precinct.

C. An automated audit shall consist of a public automated tally of the votes cast across every race that appears on the ballot.

D. The division shall adopt rules for approval of an independent audit system.

E. The Canvassing Board shall:
   1. Make selection of the randomly selected precincts at a publicly noticed canvassing board meeting.
   2. Post a notice of the audit (including date, time and place) in four conspicuous places in the county and on the home page of the supervisor of elections website.
   3. Complete the audit and make results public no later than 11:59 p.m. on the 7th day following certification of the election.
   4. Within 15 days after completion of the audit, provide a report with the results to the Department of State. The report shall contain:
      a. The overall accuracy of the audit.
      b. A description of any problems or discrepancies encountered.
      c. The likely cause of such problems or discrepancies.
      d. Any recommended corrective action.

F. Audit not required: If a manual recount is undertaken pursuant to s. 102.166, FS, the canvassing board is not required to perform the audit provided for in this section.

XVIII. Contest of Election Sections 102.168 and 102.171, FS.

A. 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:
   1. Any unsuccessful candidate for such office or nomination OR
   2. By an elector qualified to vote in the election related to such candidacy OR
   3. By any taxpayer, respectively.

B. Does not apply to a member of the Florida Legislature in a general election or a universal primary, s. 102.171, FS.

C. Such contestant shall file a complaint, together with the fees with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested.

D. The complaint must include:
   1. The grounds on which the contestant intends to establish his or her right to the office or set aside the results of the election on a submitted referendum.
   2. The grounds contesting an election are:
a. Misconduct, fraud, or corruption on the part of any election official or 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 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. The Canvassing Board responsible for canvassing the election is an indispensable party defendant for county and local elections and the Elections Canvassing Commission is an indispensable party defendant for federal, state and multicounty elections and the successful candidate is an indispensable party to any action brought to contest the election or nomination of a candidate.

F. The contest may not be rejected purely because of form if the statements are sufficient as outlined above (D).

G. The defendant has 10 days to file an answer to the complaint.

H. Anyone filing such a contest is entitled to an immediate hearing with some discretion given to the court to limit the time taken by such proceeding.

I. In any contest challenging the canvassing board’s decision on the legality of an absentee ballot based on signature comparisons, the circuit court’s review or consideration is limited strictly to the signature on the voter’s certificate and the signature of the elector in the registration records. The court’s review shall be to determine only if the canvassing board abused its discretion in making its decision.
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. Alternate canvassing board members must be appointed pursuant to paragraph (e). 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 or alternate member cannot be appointed as provided elsewhere in this subsection, or in the event of a vacancy in such office, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member or alternate 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.
   (e)1. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (a).
   2. The chair of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (d).
   3. If a member of the county canvassing board is unable to participate in a meeting of the board, the chair of the county canvassing board or his or her designee shall designate which alternate member will serve as a member of the board in the place of the member who is unable to participate at that meeting.
4. If not serving as one of the three members of the county canvassing board, an alternate member may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board’s decisions or determinations.

(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 absent electors’ ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. Public notice of the time and place at which the county canvassing board shall meet to canvass the absent electors’ ballots and provisional ballots shall be given at least 48 hours prior thereto by publication on the supervisor of elections’ website and 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 absent electors’ ballots and the provisional 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.

(3) The canvass, except the canvass of absent electors’ returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor, 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 2 a.m. of the day following any primary, general, 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 retabulation of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine 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 tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4) (a) The supervisor of elections shall upload into the county’s election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(9), 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

(5) The canvassing board shall submit on forms or in formats provided by the division unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure no later than noon on the third day after any primary election and no later than noon on the fourth day after any general or other election. Such returns shall include the canvass of all ballots as required by subsection (2).

(6) If the county canvassing board determines that the unofficial returns may contain a counting error in which the vote tabulation system failed to count votes that were properly marked in accordance with the instructions on the ballot, the county canvassing board shall:

(a) Correct the error and retabulate the affected ballots with the vote tabulation system; or

(b) Request that the Department of State verify the tabulation software. When the Department of State verifies such software, the department shall compare the software used to tabulate the votes with the software filed with the department pursuant to s. 101.5607 and check the election parameters.
(7) If the unofficial returns reflect that a candidate for any office 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, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. 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.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(5). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error.

(b) Each canvassing board responsible for conducting a recount where touchscreen ballots were used shall examine the counters on the precinct tabulators to ensure that the total of the returns on the precinct tabulators equals the overall election return. If there is a discrepancy between the overall election return and the counters of the precinct tabulators, the counters of the precinct tabulators shall be presumed correct and such votes shall be canvassed accordingly.

(c) The canvassing board shall submit on forms or in formats provided by the division a second set of unofficial returns to the Department of State for each federal, statewide, state, or multicounty office or ballot measure. The returns shall be filed no later than 3 p.m. on the 5th day after any primary election and no later than 3 p.m. on the 9th day after any general election in which a recount was ordered by the Secretary of State. If the canvassing board is unable to complete the recount prescribed in this subsection by the deadline, the second set of unofficial returns submitted by the canvassing board shall be identical to the initial unofficial returns and the submission shall also include a detailed explanation of why it was unable to timely complete the recount. However, the canvassing board shall complete the recount prescribed in this subsection, along with any manual recount prescribed in s. 102.166, and certify election returns in accordance with the requirements of this chapter.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system, which shall be uniform to the extent practicable.

(8) 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.

(9)(a) At the same time that the official 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 must describe:
1. All equipment or software malfunctions at the precinct level, at a counting location, or within computer and telecommunications networks supporting a county location, and the steps that were taken to address the malfunctions;
2. All election definition errors that were discovered after the logic and accuracy test, and the steps that were taken to address the errors;
3. All ballot printing errors or ballot supply problems, and the steps that were taken to address the errors or problems;
4. All staffing shortages or procedural violations by employees or precinct workers which were addressed by the supervisor of elections or the county canvassing board during the conduct of the election, and the steps that were taken to correct such issues;
5. All instances where needs for staffing or equipment were insufficient to meet the needs of the voters; and
6. Any additional information regarding material issues or problems associated with the conduct of the election.

(b) If a supervisor discovers new or additional information on any of the items required to be included in the report pursuant to paragraph (a) after the report is filed, the supervisor shall notify the division that new information has been discovered no later than the next business day after the discovery, and the supervisor shall file an amended report signed by the supervisor of elections on the conduct of the election within 10 days after the discovery.

(c) 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.

(10) The supervisor shall file with the department a copy of or an export file from the results database of the county’s voting system and other statistical information as may be required by the department, the Legislature, or the Election Assistance Commission. The department shall adopt rules establishing the required content and acceptable formats for the filings and time for filings.

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; s. 41, ch. 2001-40; s. 20, ch. 2002-17; s. 26, ch. 2003-415; s. 58, ch. 2005-277; s. 33, ch. 2007-30; s. 14, ch. 2010-167; s. 43, ch. 2011-40; s. 19, ch. 2013-57; s. 34, ch. 2016-37.

Note.—Former s. 102.45.
Ms. Debra E. Eastman  
Town Clerk, Town of Miami Lakes  
15700 NW 67th Avenue  
Miami Lakes, Florida 33014  

RE: DE 08-10  
Canvassing Board – Disqualification of Member  
§ 102.141(1), Florida Statutes  

Dear Ms. Eastman:  

This letter responds to your request for an advisory opinion. You are the Town Clerk for the Town of Miami Lakes, and you serve as the supervisor of elections for its municipal elections. As a local officer having election-related duties, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2008). In the absence of a town charter provision, you state that Miami Lakes follows section 102.141, Florida Statutes (2008), concerning the composition and selection of its canvassing board members.

You ask essentially the following question:

Does a contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member disqualify that member from serving on the canvassing board under the provisions of section 102.141(1), Florida Statutes (2008)?

The short answer to your question is “no” if the contribution is the extent of the canvassing board member’s participation in the campaign of the candidate.

Section 102.141(1)(a)-(d), Florida Statutes (2008), disqualifies a canvassing board member or a substitute member of a canvassing board if the member is a candidate with 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. The Election Code does not define “active participant,” nor have we found it defined in any Florida appellate case law or Attorney General Opinions. We believe the focus must be on the modifier “active” in the phrase “active participant.” If the member is a passive participant, the member would not be disqualified from being a member of a canvassing board. We do not believe that a monetary...
contribution to a candidate's campaign by itself makes a canvassing board member an "active participant" in the campaign.

Consistent with prior informal opinions provided by the Division of Elections, we interpret being an "active participant" in the campaign or candidacy of any candidate who has opposition in the election being canvassed to require something beyond giving of a campaign contribution.

SUMMARY

A contribution by a canvassing board member to a candidate in a contested race to be canvassed by the canvassing board member by itself does not disqualify that member from serving on the canvassing board. To be disqualified, the member must be an "active participant," which means something more than the mere giving of a campaign contribution.

Sincerely,

[Signature]

Donald L. Palmer
Director, Division of Elections

Prepared by:
Gary J. Holland
Assistant General Counsel
October 15, 2009

Honorable Sharon L. Zeller
County Court Judge
Broward County Courthouse
Fort Lauderdale, Florida 33301

RE: DE 09-07
Canvassing Board – Disqualification of Member;
§§ 102.141(1), Florida Statutes

Dear Judge Zeller:

This letter responds to your request for an advisory opinion. You are the Administrative County Judge for Broward County and, as such, you serve as the chair of the County Canvassing Board. As a local officer having election-related duties, the Division of Elections has authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2009).

Section 102.141(1)(a)-(d), Florida Statutes (2009), disqualifies a canvassing board member or a substitute member of a canvassing board if the member is a candidate with 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.

You ask if whether any or all of the following activities by a member of the canvassing board constitute being an “active participant” in the campaign or candidacy of any candidate who has opposition in the election being canvassed:

- Being a member of an election or re-election committee for a candidate
- Public endorsement with or without financial support of a candidate
- Holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate
- Signing endorsement card for a candidate
- Attending a fundraiser for a candidate
- Chairing or co-chairing an ongoing election campaign or fundraiser for the candidate
As we stated in *Division of Elections Opinion 08-10* (September 26, 2008):

The Election Code does not define “active participant,” nor have we found it defined in any Florida appellate case law or Attorney General Opinions. We believe the focus must be on the modifier “active” in the phrase “active participant.” If the member is a passive participant, the member would not be disqualified from being a member of a canvassing board. We do not believe that a monetary contribution to a candidate’s campaign by itself makes a canvassing board member an “active participant” in the campaign.

Your questions now cause us to further define what makes one an “active participant” under section 102.141, Florida Statutes. Prior Division of Elections’ informal opinions concerning this section have interpreted being an “active participant” to include activities such as publicly endorsing a candidate, displaying a candidate’s campaign signs, or soliciting votes for a candidate. Stated more broadly, an “active participant” in a campaign is one who undertakes an action intentionally to demonstrate or generate public support of the candidate. This does not include merely making a campaign contribution. While a contribution to a candidate becomes a public record by operation of law (see section 106.0706, Florida Statutes (2009)), it cannot be said the donor is making the contribution for the intentional purpose of demonstrating or generating public support for the candidate. In fact, the donation does not become a public record until the candidate files the campaign finance reports on the required due dates, which may be months after the contribution is made. See § 106.07(1), Florida Statutes (2009). Therefore, one who merely makes a campaign contribution is a “passive participant” in a candidate’s campaign. *Division of Elections Opinion 08-10* (September 26, 2008).

Accordingly, to address your specific questions: Being an “active participant” would include being a member of an election or re-election committee for a candidate; public endorsement with or without financial support of a candidate; holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate; signing an endorsement card for a candidate; attending a candidate’s campaign fundraiser; or chairing or co-chairing an ongoing election campaign or fundraiser for a candidate. In each of these activities one is undertaking an action intentionally to demonstrate or generate public support for the candidate.

**SUMMARY**

To be disqualified as a canvassing board member, the member must be an “active participant” in the campaign or candidacy of any candidate who has opposition in the election being canvassed. An “active participant” means that a canvassing board member undertakes an effort intentionally to demonstrate or generate public support of a candidate beyond merely making a campaign contribution.
The following activities would make a canvassing board member an “active participant” in the candidate’s campaign or candidacy: Being a member of an election or re-election committee for a candidate, public endorsement with or without financial support of a candidate; holding campaign signs, wearing a campaign tee-shirt, or other public display of support for a candidate; signing an endorsement card for a candidate; attending a candidate’s campaign fundraiser; or chairing or co-chairing an ongoing election campaign or fundraiser for a candidate. However, the mere giving of a campaign contribution would not make a canvassing board member an “active participant.”

Sincerely,

[Signature]

Donald L. Palmer
Director, Division of Elections
October 26, 2015

Flagler County Board of County Commissioners
c/o Craig M. Coffey, County Administrator
1769 East Moody Boulevard, Building 2
Bunnell, Florida 32110

Re: DE 15-03 Canvassing Board –
Disqualification of Member; Authority of
Canvassing Board to Remove Member;
§ 102.141, Fla. Stat.

Dear Commissioners:

As the Flagler County Board of County Commissioners, you have asked for an advisory opinion through your county administrator regarding the conduct of the county canvassing board under section 102.141, Florida Statutes. Because this answer will assist the board in its election-related duties, the Division has the authority to issue an opinion pursuant to section 106.23(2), Florida Statutes.

According to your request, two members of Flagler County’s canvassing board voted to remove its third member during its official meeting on November 17, 2014. This removal ostensibly occurred pursuant to section 102.141, Florida Statutes, which requires the replacement of a canvassing board member who is an “active participant” in the campaign of a candidate. You now ask whether the county canvassing board had the authority to remove and replace one of its members. The short answer to this question is no.

You also present other related questions, such as whether the county canvassing board must establish a factual basis for the removal or disqualification of a board member and whether there is a process by which the disqualified member may appeal. The answer to your first question obviates the need to reach these two additional questions. You also ask, presumably within the context of the county canvassing board’s action, whether it is considered “active participation” in a campaign under section 102.141 where a campaign mailer containing an endorsement is mistakenly attributed to a member of the county canvassing board. While an answer to this question does not appear necessary within the context of this opinion, you should note that...
The membership of the county canvassing board is statutorily set: It “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.” § 102.141(1), Fla. Stat. (2015). “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” with a “substitute member” as specified in the ensuing subparagraphs. Id.

The statute is silent about who determines whether a member is disqualified. But it does set out specifically who makes a substitution when necessary: The chief circuit judge “shall appoint a substitute member” when all county judges are “disqualified”; the chair of the board of county commissioners “shall appoint a substitute member” if the supervisor is “disqualified”; and the board of county commissioners “shall appoint a substitute member” when the county commission chair is “disqualified.” § 102.141(1)(a) – (c), Fla. Stat. If a substitute member otherwise cannot be appointed, or if the substitute then becomes disqualified, the chief circuit judge “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.” § 102.141(1)(d), Fla. Stat.

Subparagraphs (a) through (d), taken together, indicate that ordinarily the statutory member must decide for him- or herself, based on personal knowledge of pertinent facts or circumstances, whether he or she is disqualified. Any dispute over whether a statutory member should or could be disqualified and replaced with a substitute might ultimately require judicial resolution. In any event, the canvassing board has no authority to disqualify or remove one of its members. The only vote a canvassing board is authorized to take regarding its membership is for the election of a chair if no county judge can be appointed by the chief circuit judge to serve on the board. See § 102.141(1)(a), Fla. Stat. The canvassing board’s statutory powers and duties otherwise are clearly prescribed.

previously, the Division has opined that an “active participant” is “one who undertakes an action intentionally to demonstrate or generate public support of the candidate.” Div. of Elections Op. 09-07 (Oct. 15, 2009).

2 The Division emphasizes the distinction between a substitute member of the canvassing board and an alternate member. A substitute member permanently replaces a statutory member; by contrast, the alternate member serves as “back-up” for any statutory or substitute member who may be unable to serve for a temporary period or during a portion of a board meeting. See § 102.141(1), (1)(e), Fla. Stat. (2015). The chief circuit judge and county commission chair each selects an alternate in advance to serve in place of a statutory member or substitute member “unable to participate at [a particular] meeting.” § 102.141(1)(e)1. – 3., Fla. Stat. The canvassing board chair decides which of the two alternates will serve as a temporary member in place of a permanent member unable to participate from meeting to meeting. § 102.141(1)(e)3., Fla. Stat.
SUMMARY

There are three permanent members of a county canvassing board. Those members are set by statute as a county judge appointed by the chief circuit judge; the supervisor of elections; and the chair of the board of county commissioners. If one of those members is disqualified, the vacancy must be filled permanently with a substitute member appointed in accordance with section 102.141(1)(a) – (d), Florida Statutes. The county canvassing board does not have the authority to disqualify or remove one of its members or to determine who will serve as the permanent replacement for a disqualified member.

Respectfully,

Maria I. Matthews, Esq.
Director, Division of Elections
SUBJECT: Update on Hazardous Trees in the Hammock

DATE OF MEETING: December 4, 2017

OVERVIEW/SUMMARY: As the Board is aware, Hurricane Matthew storm surge flooded approximately 1200 acres in northeast Flagler County, killing some trees and vegetation outright, and leaving others severely damaged and/or stressed. This event was followed by an extremely dry winter and spring, exacerbating the vegetation stress and deaths. Pines within the storm surge area are almost 100% dead, and oak deaths appear to exceed 60%. Some of these dead and compromised trees now represent potential life safety hazards to people and properties due to their proximity to roads, power lines or structures. The County’s area of responsibility is to identify and render safe hazardous trees on County maintained roads and County owned properties.

Staff began a hazardous tree assessment process shortly after the start of 2017. Due to the size of storm surge area and current staff workload, outside personnel were temporarily hired and trained in tree assessment to assist with the large number of trees requiring cataloging. Recently Flagler County was able to secure the services of the Florida Forest Service Urban Forest Strike Team (FFS) members. These personnel are trained foresters with experience in post disaster tree evaluations as well as experience in FEMA reimbursement criteria. The tree assessment was completed in early September, and the numbers vary slightly from the data collected during the summer. The final assessment noted 575 FEMA eligible trees. This data will be included in the County’s solicitation to bidders.

To fund the project while the assessments were underway, staff, with the assistance of CDR Maguire submitted a FEMA Public Assistance Project application (reference # FCA YD03) to attempt to recover a large portion of the funds anticipated to be expended. The FEMA application estimate was $589,488.50. It is difficult to provide a more accurate detail as the expense of rendering each tree safe is unique, dependent on species of tree, proximity to power lines or structures, whether the tree requires climbing or a bucket truck, or whether the material needs to be removed offsite. FEMA defines hazardous trees at those caused by a disaster which constitute an immediate threat to lives, public health and safety, improved property, and have at least a diameter breast height of six inches; and one or more of the following criteria are met:

- More than 50% of the crown damaged or destroyed;
- Split trunk or broken branches that expose heartwood;
- It has fallen or been uprooted within a public-use area; and/or
- It is leaning at an angel greater than 30 degrees.
The next step in the process is to secure a contractor to perform the work. The bid process, selection of a contractor and commencement of work would be as follows:

11/01/2017 Request for bids published
11/09/2017 Non-mandatory pre-bid meeting
11/29/2017 Bid document opened
12/18/2017 Presentation to BOCC and request to proceed with recommended contractor
12/19/2017 Commencement of work
03/08/2018 Reimbursement request submitted to FEMA

Further, there are additional trees that are hazards within public lands and rights of way that fall outside of FEMA criteria. For example, there are trees less than 6’ diameter at breast height, which have died as a result of Hurricane Matthew flooding, are located on public lands and pose a hazard to structures. Staff will look to address these trees in the most cost effective way possible, utilizing County staff and equipment when possible.

Finally, there exists an unknown but larger number of trees which exist on private property. Flagler County has submitted a Public Assistance application with FEMA for these trees also (FACYD04).

To date FEMA has not written either project into a Public Assistance (PA) Project Worksheet. There is no Federal project number assigned and we are transitioning to our fourth FEMA representative for Hurricane Matthew that writes these work orders. Under normal conditions we have eighteen months to complete our Category A and Category B projects. These projects are both considered to be emergency measures and not permanent work. On November 7th Flagler County hit the 13-month mark and after March 7, 2018 we will need an additional extension from FEMA because we will have reached the 18-month benchmark. We hope the fact that FEMA has not yet written the project worksheets will be taken into consideration.

DEPT./CONTACT/PHONE #: Land Management, Tim Telfer (386) 313-4066

RECOMMENDATION: Request the Board Receive this Update and Advise of any Requested Changes.

ATTACHMENTS:
1. Tree Inventory Maps

Craig M. Coffey, County Administrator
1 Dec 2017

Date
Hurricane Matthew DR-4283 (FFS)
Saltwater Intrusion in Flagler County (FL)

Date: October 31, 2017
GIS: Dudley Hartel, Urban Forestry South
Data: Florida Forest Service
November 30, 2017

Honorable Travis Hutson  
312 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Honorable Paul Renner  
1102 The Capitol  
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Dear Legislators:

Since our County’s Legislative Delegation meeting in October, a number of legislative bills have come up that may materially affect Flagler County. Although it is early and there are many bills yet to be filed, sometimes a bill can be modified or killed early in a session. We want to arm you with our position ahead of time so you can take every opportunity to assist us with these legislative issues.

Enclosed is a synopsis of our position on the bills we believe will have a substantial impact to Flagler County. We hope these analyses will help you to facilitate our position on these measures to your colleagues and leadership in the Florida Senate and House of Representatives and bring clarification on the significance of these changes for our local government.

We truly appreciate your commitment to the people of Flagler County. With your dedication and support of our position on these bills, we are hopeful your colleagues in the Florida House and Senate will give prompt consideration to the impact these measures will have on our community.

If there is anything else we can provide, please do not hesitate to let us know.

Sincerely,

Gregory L. Hansen, Chair  
Flagler County Board of County Commissioners

http://www.flaglercounty.org
Enclosures: 2018 Flagler County Legislative Position Items

Copy: Flagler County Board of County Commissioners
    The Honorable Catherine Robinson, Mayor City of Bunnell
    The Honorable Linda Provencher, Mayor City of Flagler Beach
    The Honorable Milissa Holland, Mayor City of Palm Coast
    The Honorable Steve Emmett, Mayor Town of Beverly Beach
    The Honorable Leslie Babonis, Mayor Town of Marineland
    Lester Abberger
    Lisa M. Hurley
1. Vacation Rentals (Oppose)
   HB 773
   HB 773 would require local governments to apply uniform application of local laws, ordinances, and/or regulations to all residential properties without regard to whether the property is used as a short-term vacation rental or a long-term rental, and regardless of whether a property owner chooses not to rent their property.  
   *This bill is another attempt to erode local self-governing, while adding unnecessary and unfunded oversight and enforcement of all residences. While this sounds good, in practice and legally this does not work.*

2. Tourist Development Tax (Oppose)
   SB 658 / HB 585
   Senate Bill 658 could essentially divert our existing Tourist Development taxes away from their current designated uses. The fear is that many activities of financially strapped local governments could try to be connected to tourism. If diverted, it could negatively affect our local community’s ability to fuel the health and growth of one of our biggest economic drivers - tourism.
   *Oppose this bill to prevent drastic changes to a major component of our economy that is working for Floridians.*

3. Economic Development and Tourism Promotion Accountability (Oppose)
   HB 3
   Authorizes and requires Auditor General to conduct certain audits and provides transparency and accountability provisions applicable to economic development agencies and tourism promotion agencies with provided penalties. Requires governing board of counties to review certain proposed contracts and certifications.
   *Once enacted, this bill will severely hinder successful economic development efforts by micromanaging oversight by the state and adding complicated guidelines that lead to competitive disadvantages and conflicts of interest of those that assist us with economic development. It also unnecessarily grows government bureaucracy.*
4. Public Meetings (Support)
SB 192 / HB 79
SB 192 revises Florida’s “Government in the Sunshine Law,” or “Sunshine Law,” by codifying judicial interpretation specifying conditions under which members of any board or commission may participate in fact-finding exercises or excursions. It also declares all meetings or de facto meetings of any board or commission at which officials acts are to be taken or public business is to be transacted or discussed to be open public meetings. Members of the same board or commission may participate in fact-finding exercise or excursions to research public business, and may participate in meetings with a member of the Legislature if certain conditions are met.

*Would provide much needed clarification via Judicial Interpretation in the application of the Sunshine Law.*

5. Tree and Timber Trimming, Removal, and Harvesting (Oppose)
HB 521 / SB 574 (Steube)
Bill SB 574 would prohibit a local government from regulating the trimming, removal or harvesting of trees and timber on private property or requiring mitigation for tree removal or harvesting on private property. It would also preempt local governments from prohibiting the burial of vegetative debris on properties larger than 2.5 acres. This appears to be a personal issue of one Senator.

*This bill proposes not only a loss of Home Rule Authority, but also prohibits a community from shaping its appearance through tree protection. It also appears to be personally motivated for one tiny area of the state.*

6. Local Government Fiscal Transparency (Oppose)
HB 7
Local governments are continuously working to enhance transparency and listen to citizens for ways to better make information available to the public. HB 7 requires additional public notices, public hearings, analyses and reporting for local government tax increases and new tax supported debt. It also requires additional reporting requirements for economic development incentives.

*Local governments already have processes in place to ensure fiscal transparency. This creates additional bureaucracy, costs, and makes the difficult job of governing even harder.*
7. Florida Building Commission (Oppose)
HB 299
The Florida Building Commission implements and adopts the Florida Building Code, the code that includes all of the statewide building requirements and standards for construction in the state and approves products for statewide acceptance. This makes each Commission member an integral part of the technical body that is responsible for the development, maintenance, and interpretation of the Code.

This bill proposes to eliminate many key members of the Commission such as a mechanical contractor, a mechanical or electrical engineer, municipal and county code enforcement officials and fire marshal, a public education representative, and a municipal/county representative. If these positions were eliminated, it would mean that large sections of the code would not be represented by their respective experts.

Additionally, exclusion of certain municipal and/or county positions would also signify the loss of local representation on the Commission. Since its inception, the Commission has included Local Representatives who would ensure the Code continues to allow for differences in the standards of different locales based on compelling differences in physical conditions, all while ensuring the availability of information on local differences to all parties throughout the state. It appears that the majority of the positions being removed are governmental.

*The impacts to local government membership are disproportionate and tip the balance towards private self-regulation. The current system works well and has created stronger building codes which has served Florida well during disasters.*

8. Emergency Medical Services - COPCN (Oppose)
HB 285 / SB 488
This bill exempts a governmental entity that maintains fire rescue infrastructure and provides first responders as defined in s.112.1815 from the requirement of obtaining a certificate of public convenience and necessity or any other authorization from a county to provide advanced life support non-transport services. The exception to the certificate of public convenience and necessity requirement does not apply to a county in which there is a countywide emergency medical services authority created by special act (Pinellas).

*Oppose legislation that would seek to alter the current COPCN process that causes financial or service gaps and/or the potential duplication of services. It also should apply to all jurisdictions equally including Pinellas County.*

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