



Canvassing Board – Department of State Perspective

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Florida State Association of Supervisors of Elections Canvassing Board Workshop

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Federal Write-in Absentee Ballot (FWAB)

FWAB (section 101.6952, F.S.)

Elections

Post-2014:

Applies in **all** federal, state, and local elections, including public measures and judicial retention

Canvass

Post-2014

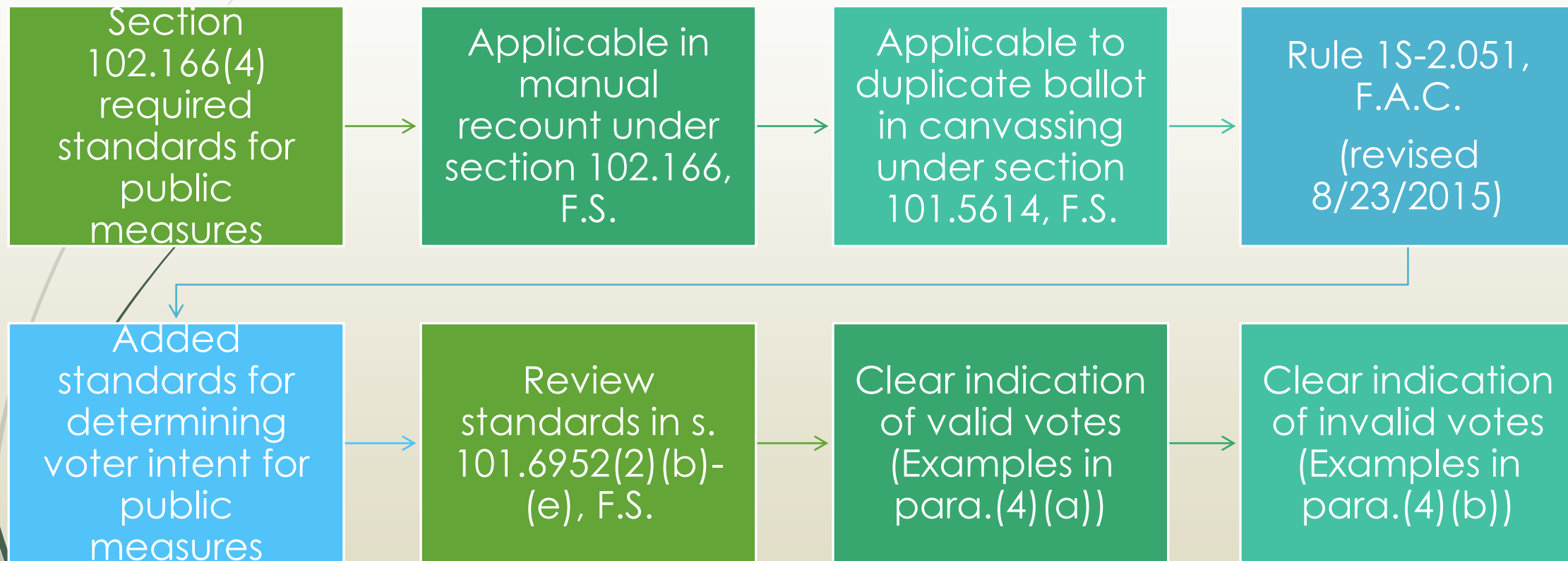
Canvass if received by 7 pm. Official ballot received by 7 pm on election day trumps FWAB. See *10-day extension exception*

10-day extension exception

Post-2014:

Codified rule allowing for 10 day waiting period for overseas ballots in Presidential Preference Primary and General Elections, only.

Determining Voter Intent – FWAB



Determining Voter Intent – FWAB (cont'd)

Ballots with a write-in of only the party name

- paragraph (4)(c) of the Rule

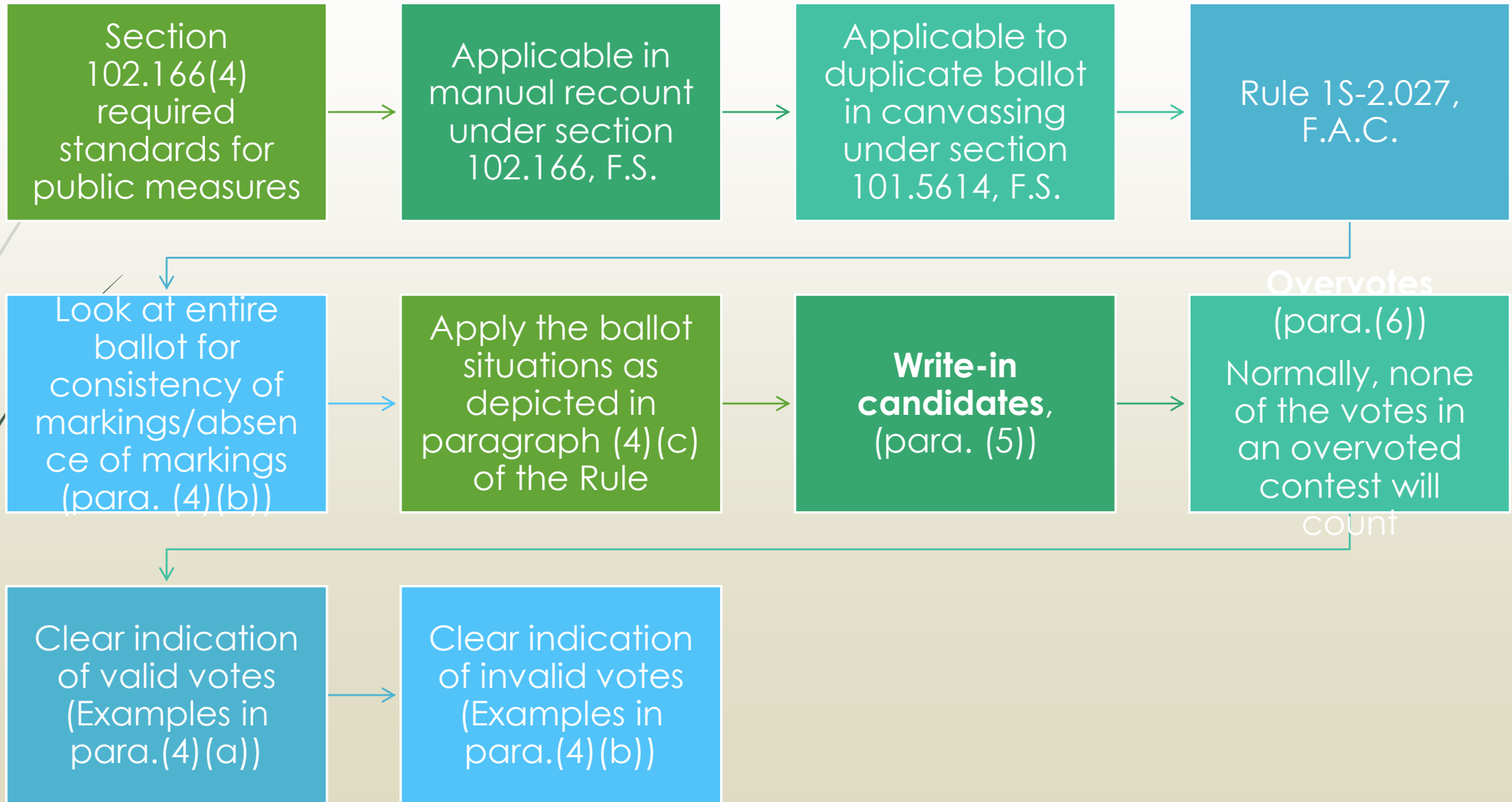
Overvotes

- paragraph (4)(d) of the Rule: Overvotes do not count
- The votes in an overvoted contest will not count

Judicial Retention Issues

- Writing the name of the candidate *alone* on the ballot will *not* count as a vote in the race. A “Yes” or “No” must be indicated for the judicial re

Determining Voter Intent – Ballots other than FWAB





Duplicating an Absentee Ballot

Interpretation of section 101.5614(5)(a), F.S.

Statute provides: “Likewise, a duplicate ballot shall be made of an absentee ballot containing an overvoted race or a marked absentee ballot in which every race is undervoted which shall include all valid votes *as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4).*”



Division interpretation: Need not duplicate every overvoted or undervoted absentee ballot. Duplication is required only when voter intent can be determined per the rules adopted by the Division to indicate a valid vote. If the ballot contains a clear overvote or undervote, then duplication is unnecessary.

Scenario

Overvoted ballot

- Voter fills in the ovals per instructions on an absentee ballot and in a race for “Vote for 1.” Two ovals are filled in, but one has an X through it.
- The canvassing board could conclude it was the voter’s intent to not have the filled-in oval with the X through it counted. If so, the canvassing board would then duplicate the absentee ballot by not filling in the oval that had the X through it. The duplicated ballot would then be processed through the tabulator.
- **Note:** This scenario would not be included in the overvote and undervote report submitted to the Division per s. 101.595, F.S. It does not constitute a true overvote, but rather reflects the voter intending to correct his or her mistake by placing the X through the mistake.



Canvassing Board Composition

Advisory Opinion 15-03

- ▶ *County canvassing board as a body 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.*
- ▶ By law, board consists of:
 - ▶ 3 permanent members
 - County judge appointed by the chief circuit judge;
 - Supervisor of elections
 - 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
(see section 102.141 (1)(a) -(d), Florida Statutes.)



Difference: Substitute versus Alternate Member of Canvassing Board

- **Substitutes** – When a permanent replacement is needed
 - Substitutes are appointed per the statute as the need arises.
- **Alternates** – When a temporary replacement is needed for member unable to participate in a meeting
 - Two alternates appointed at outset
 - Ready and able to step in as needed at Chair's (or designee's) direction
 - Alternates can attend, but not vote, at meetings before one or both actually become a temporary member of the canvassing board.
- Alternates may become substitute member if need arises to permanently replace canvassing board member provided appointment done per statute.



Recounts

Timelines for Recounts (s. 102.141, F.S.)

- ▶ **Machine recount:** Determined by 1st set of unofficial returns. 1st set due:
 - ▶ **Primary election:** Noon, 3rd day after the election
 - ▶ **General election:** Noon, 4th day after the election
 - ▶ Time* to have results of machine recount submitted (2nd set of unofficial returns) - 51 hours for primary; 123 hours for general
- ▶ After machine recount, the 2nd set of unofficial returns determine if **manual recount of overvotes and undervotes** will occur. 2nd set due:
 - ▶ **Primary election:** 3 p.m., 5th day after election
 - ▶ **General election:** 3 p.m., 9th day after election
 - ▶ Time* to have official results submitted after manual recount - 50 hours for primary; 69 hours for general
- * However, recount may not start until ordered by the proper authority. Secretary of State orders for federal, state, and multi-county races; County canvassing board orders in all other races.



Why are the recount timelines short?



Answer: Statutorily specified. Further explanation for general elections:



- **Fla. Const., Art II, s. 15:** “Members of the legislature shall take office upon election.”
 - Case law interprets this to be on Election Day.
- **Fla. Const., Art II, s. 3:** “On the fourteenth day following each general election the legislature shall convene for the exclusive purpose of organization and selection of officers.”
 - Thus, general election must be final by 14th day after general election – the Elections Canvassing Commission certifies the election at 9 a.m. on that day so that organizational session of Legislature can occur.



What happens if canvassing board misses deadline for reporting election results?

Answer: See section 102.112, F.S.

- ▶ Deadlines for County Canvassing Commission to submit official returns:
 - **Primary election:** 5 p.m., 7th day following the election
 - **General election:** Noon, 12th day following election
- ▶ **If deadline missed, any later filed returns are ignored and the results previously on file at the designated deadline shall be certified.**



What happens after canvassing board submits official results?

Answer: See section 102.111, F.S.

- ▶ The Division of Elections, as the staff for the Elections Canvassing Commission (the Governor + 2 cabinet members), prepares certification paperwork for the returns of all federal, state, and multicounty offices and public measures.
- ▶ The meeting date/time of the Elections Canvassing Commission is set by statute:
 - **Primary election:** 9 a.m., 9th day following the election
 - **General election:** 9 a.m., 14th day following the election



What can a court review in an election contest challenging the canvassing board's signature comparison on absentee ballots?



Answer: See section 102.168(8), F.S.

- ▶ **Statute:** “In any contest that requires a review of the canvassing board’s decision on the legality of an absentee ballot ... based upon a comparison of the signature on the voter’s certificate and the signature of the elector in the registration records, **the circuit court may not review or consider any evidence other than the signature on the voter’s certificate and the signature of the elector in the registration records.** The court’s review of such issue shall be to determine only if the canvassing board *abused its discretion* in making its decision.”



The state depends upon you!

Any Questions?