Report On Overvotes and Undervotes in the Gubernatorial Race, and Post-Election Voting System Audits for the 2022 General Election

Prepared pursuant to Sections 101.591, and 101.595, Florida Statutes

February 15, 2023

Executive Summary

As required pursuant to sections 101.591 and 101.595, Florida Statutes, the Florida Department of State submits this report to the Florida Legislature. The report contains the Department's analysis of the results of voting system audits conducted post-certification of the elections (Part I) and separately, an analysis of the overvotes and undervotes (for the top race on the ballot)(Part II, respectively, for the 2022 General Election. The report is due no later than February 15 of the year following the General Election.

Part I - Analysis and Report of Overvotes and Undervotes

Section 101.595, Fla. Stat., directs the Florida Department of State (Department) to report on the performance of each type of voting system after a general election based on "the total number of overvotes and undervotes in the 'President and Vice President' or 'Governor and Lieutenant Governor' race that appears first on the ballot or, if neither appears, the first race appearing on the ballot." This part of the report is conducted on the 2022 Gubernatorial contest. The Department analyzed overvote and undervote data from each of the 67 Florida county Supervisors of Election, including the likely reasons for such overvotes and undervotes and other useful information. The Department's analysis focused on determining whether an identifiable problem exists with a voting system's design and/or whether ballot design or instructions contributed to voter confusion during the general election.

The Department makes the following findings for the 2022 Gubernatorial contest:

1. The rates for the overvote and undervote decreased in 2022 compared to previous overvote and undervote rates for general elections. However, the voting method of casting a vote remains consistently a key determining factor in the overvote and undervote rates. That is, a higher number of overvotes and undervotes occurred, regardless of precinct-count or central count tabulator used, when voting by mail versus voting during early voting and Election Day. This is consistent with findings from prior reports.

2. The compiled Gubernatorial contest data do not show anything to suggest or conclude that ballot design and/or ballot instruction issues caused voter confusion during the election, or that the voting equipment manifested any anomalies. This is consistent with findings from prior reports.

3. An inherent bias continues to exist in actual overvote rates (or conversely higher than actual undervote rates) due to the current ballot duplication requirements in law which skews the number of actual undervotes reported. Therefore, the Department recommends a legislative change to section 101.5614, Fla. Stat., to clarify that a duplicated ballot must include not only valid but also invalid votes as determined by the canvassing board.

4. The county responses as to the likely reasons for overvotes, undervotes, or if any, voter confusion, were inconclusive, despite a recent revision to the section of the data collection tool to better capture and quantify the factors that may contribute to voter confusion, if any existed.

Part II - Post-Election Voting System Audit Report

Section 101.591, Fla. Stat., directs the Florida Department of State (Department) to report on the results of the audits conducted by the counties after a general election. Audits in Florida may be conducted manually or automated using an automated independent audit software program. The purpose of the audits is to identify the overall accuracy of the report, a description of any problems or discrepancies, and any recommended actions with respect to avoiding or mitigating such circumstances in future elections.

The Department analyzed the results reported from the audits conducted by 67 county Supervisors of Elections to determine whether there is an identifiable problem encountered during the audit.

The Department makes the following findings for the 2022 General Election:

1. The overall accuracy of the manual audits was 99.99%, while the overall accuracy of the automated independent audits was also 99.99%. Most discrepancies were attributed to human error in procedures.

2. Although the accuracy of the manual and automated independent audits was 99.99%, an overall accuracy for the entire state cannot be determined. Those counties that conducted an automated independent audit are required to audit the votes cast across every race that appears on the ballot, which includes at least 20% of the precincts. Many counties choose to include all their precincts. However, counties that conduct a manual audit are required to audit a smaller universe, i.e., votes cast in one randomly selected race and randomly selecting at least 1 percent but not more than 2 percent of the precincts in that race, also chosen at random. This could lead to a larger number of differences arising between the automated independent audit and voting system results than would arise between the manual audit and voting system results, thereby affecting disproportionately the overall accuracy rate for automated independent audits.

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Introduction

Section 101.595, Fla. Stat., directs the Florida Department of State (Department) to report on the performance of each type of voting system after a general election based on "the total number of overvotes and undervotes in the 'President and Vice President' or 'Governor and Lieutenant Governor' race that appears first on the ballot or, if neither appears, the first race appearing on the ballot." Therefore, this section of the report is conducted solely on the Governor and Lieutenant Governor (Gubernatorial) contest for the 2022 General Election.

The 67 Florida county Supervisors of Elections are required to provide to the Department the overvote and undervote data and the likely reasons for such overvotes and undervotes and other useful information. The Department then analyzes the county information to determine whether there is an identifiable problem with a voting system's design and/or whether ballot design or instructions contributed to voter confusion. The findings must be reported to the Legislature and the Governor by February 15th of the year following the general election.

This section focuses on factors relating to the "*non-valid votes*" being cast for the Gubernatorial contest. The term "*non-valid votes*" consists of three categories:

- *Overvote*. An overvote occurs when a voter casts more votes than allowed in a contest. When tabulating the ballots at an early voting site or at the precinct on Election Day, the voter is immediately alerted to the error when the tabulator rejects the ballot. The voter is then given the choice to correct the ballot or to cast the rejected ballot "as-is." No statutory remedy or opportunity exists to alert voters to cure one or more overvoted contests that may appear on a provisional or vote-by-mail ballot since these types of ballots are canvassed and tabulated later at the central office.

- *Undervote*. An undervote means that the voter did not designate a choice for a contest and/or the tabulator records no vote for the contest. Occasionally, an undervote may be caused as a reflection of the machine's design rather than machine error. The machine's design may preclude reading a marked ballot that has not been completed per ballot instructions. For example, a tabulator is likely to not read ballot contests marked with a yellow highlighter. Although an undervote may be due to a voting machine error, often, an undervote reflects a voter's intent not to vote a contest. Voting systems, as counties currently code them, alert the voter as to a blank ballot (not whether there is one or more undervoted contests).[1] No statutory remedy or opportunity exists to alert voters to cure one or more undervoted contests that may appear on a provisional or vote-by-mail ballot since these types of ballots are canvassed and tabulated later at the central office.

- *Invalid write-in vote*. An invalid write-in vote may be due to voter error, such as unintentionally writing in a valid candidate's name from another contest, or intentionally writing in (as protest) "Mickey Mouse," "None of the above," "Anybody but [candidate]," or a fictitious name, or writing the name of a person who did not qualify as a candidate.

As the voting systems market has evolved over the past decade, Florida's 67 counties have upgraded or replaced their voting systems. Only two vendors currently have voting systems certified for use in the

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[1] The law is silent regarding whether tabulators should alert voters of undervotes (other than blank ballot alerts). No Florida county, to the Department's knowledge, codes their tabulators to alert voters of undervotes other than blank ballots. Undervotes in down-ballot contests are very common, and such coding would add prohibitive delays to ballot casting in the polling place.

State: "EVS" by Election Systems & Software, LLC (ES&S), and "Democracy Suite" by Dominion Voting Systems, Inc. (DVS).

As of 2020, all voting in Florida is by marksense ballot, either using a marking device (i.e., pen or pencil) or a voter interface device that produces a voter-verifiable paper output and meets the voter accessibility requirements for individuals with disabilities under the Help America Vote Act (HAVA)[2] and state law.[3]

Methodology

The 2022 General Election data was compared to data from the General Elections in 2012, 2014, 2016, 2018, and 2020. As of at least 2010, the Department has been analyzing the data at the tabulator level instead of the voting system level. This analytical approach offers more flexibility, provides greater details and is applicable in the event of future changes in voting system configuration. The Department uses a data collection tool (Form DS-DE 40, General Election Report on Overvotes and Undervotes, also known as the "Overvote-Undervote Report") to collect data and information from the Supervisors of Elections. See Appendix A.[4]

The 67 county Supervisors of Elections reported data regarding the number of provisional, duplicated, blank, and vote-by-mail ballots in Section I and their raw overvote and undervote data in Section IV Form DS-DE 40. During the data verification, reconciliation, and compilation process, counties were contacted as needed for explanations of any discrepancies or unusual entries. The aggregate data was then categorized and analyzed according to voting equipment type (tabulation device). Data herein are presented as rates or percentages of an event, rather than as raw data. The reason for this is that numbers of ballots cast vary greatly across Florida counties, ranging from a few thousand to millions of ballots cast in a county. By converting the event raw values to percentages of ballots cast, it becomes possible to compare events across all Florida counties. Based on Department recommendations in the prior Overvote/Undervote reports, the Department has also revised section III of the For DS-DE 40 to better capture and quantify the factors that may contribute to voter confusion, if any.

The 2020 election cycle was the first time that all counties in Florida used either the ES&S EVS system or the DVS Democracy Suite System. In the years prior to the 2020 General Election, some counties used either the GEMS[5] systems (with AVOS, AVOSX, and PCS tabulators), the ES&S Unity system (with M100 and M650 tabulators), or the Sequoia[6] system (with Insight+ and 400-C tabulators) which are no longer in use in Florida. Counties now use only one of five types of tabulators associated with either the DVS Voting System vendor or the ES&S voting system vendor. However, for purposes of historical comparative data analysis, it is still necessary to reference the twelve different types of tabulators that have been certified for use in the last eight years.[7]

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[2] HAVA (Title III,) 52 U.S.C. § 21081; § 101.56062, Fla. Stat.

[3] §101.56075, Fla. Stat.

[4] Form DS-DE 40 consists of 5 sections: Section (Informational/Contact/Summary total of provisional ballots accepted and rejected, and vote-by-mail ballot requested, accepted and rejected), Section II (Ballot Design), Section III (Possible Factors Affecting Undervotes and Overvote), Section IV (Report Results) and Section V (County Comments for Governor and Lieutenant Governor Race). Sections IV and V in the form are tailored in each general election year for the race that is under review.

[5] GEMS was a Premier Election Solutions product. In 2009, ES&S acquired Premier from Diebold Election Systems, Inc. In 2010, the U.S. Department of Justice mandated ES&S to divest elements of the Premier line of voting systems due to monopoly concerns. As part of the agreement, DVS then acquired Premier's voting systems.

[6] In 2010, DVS acquired Sequoia Voting Systems, Inc.

[7] Throughout this report, when data is presented at the tabulator level, the absence of a data value (designated by a dash " – ") indicates that the tabulator was not used in Florida during the stated election.

The tabulators currently used with the DVS Democracy Suite voting system include the ICE (ImageCast®Evolution) and ICC (ImageCast®Central). The ICE is a precinct tabulator. The ICC is used for high-speed central count scanning. The ES&S ElectionWare® tabulators include the precinct-level DS200®, and two high speed central count tabulators, the DS450® and the DS850®. Counties may also choose to use their precinct-level tabulators for central count tabulation.

Table 1 below shows how many counties used which tabulator type and by voting method (early voting, Election Day, and vote-by-mail).

Table 1
Voting System Tabulators by Voting Method Usage in Florida, 2022

Voting System - Tabulators	Number of Counties using Tabulators, By Voting Method		
	EV	ED	VBM
Sequoia - Insight +	0	0	0
Sequoia - 400-C	0	0	0
Democracy Suite - ICE	18	18	9
Democracy Suite - ICC	0	0	9
GEMS - AVOS	0	0	0
GEMS - AVOSX	0	0	0
GEMS - PCS	0	0	0
ES&S - M100	0	0	0
ES&S - DS200	49	49	12
ES&S - M650	0	0	0
ES&S - DS850	0	0	33
ES&S - DS450	0	0	4
Total =	67	67	67

Findings

Florida provides voters three convenient options for voting: vote-by-mail, early voting and voting at the polls on Election Day. Florida counties traditionally prepare for and conduct elections with the expectation that their voter may vote in any one of the three voting methods. However, counties, in response to their voter constituents' voting trends, may promote one or two methods more than another. Vote-by-mail has become increasingly popular in the last decade. Early voting (allowed since 2004) has also become a popular in-person voting option. Ultimately, the overvote and undervote rates for the 2022 Gubernatorial contest, whether by voting method or by tabulator type, remained consistent with the rates or trends found and reported in previous reports.

Overvote and Undervote Rate by Voting Method

Voters' choices between voting methods shift with every election cycle depending on several factors including the constituency demographics, preferences in the county, or other extenuating circumstances.[8] A comparative overview with prior elections shows the continuing upward shift since 2012 towards vote-by-mail in the 2022 General Election. **See Chart 1 below.**

Chart 1
Total Ballots Cast by Voting Method, 2012 - 2022
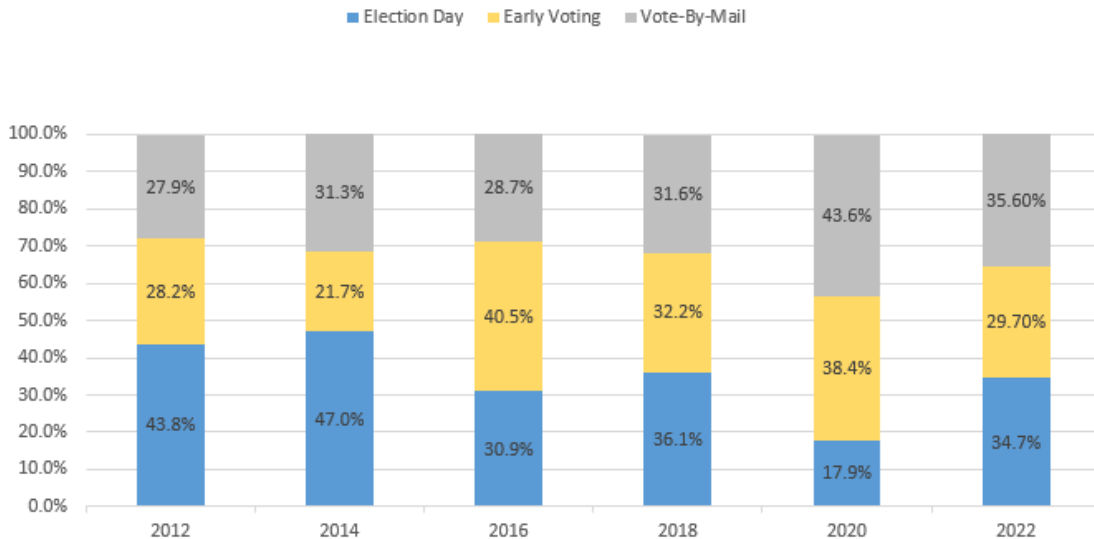
■ Election Day   ■ Early Voting   ■ Vote-By-Mail

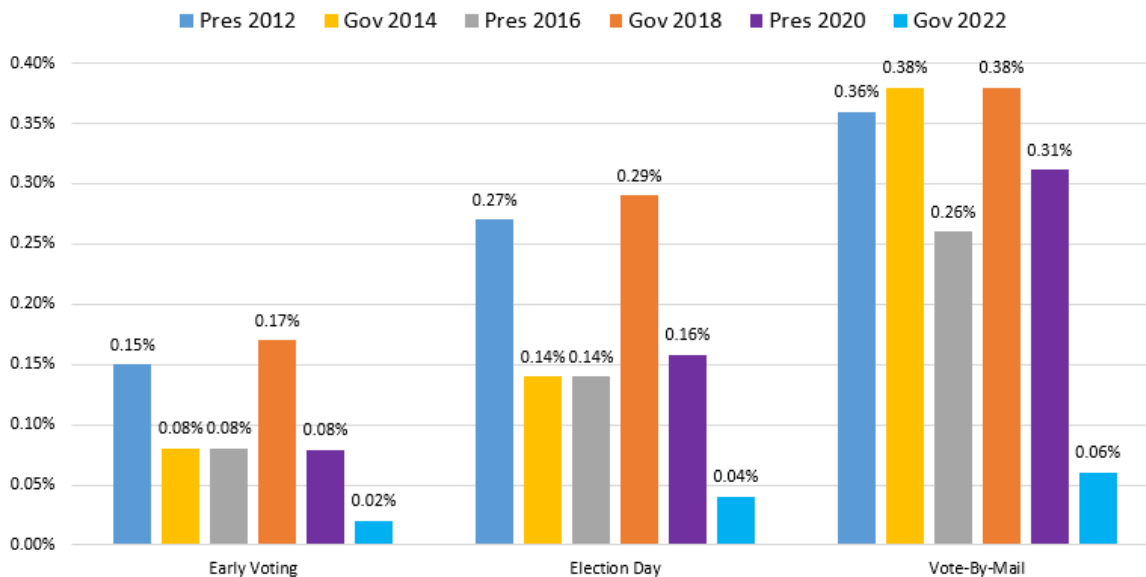| Year	Election Day	Early Voting	Vote-By-Mail
2012	43.8%	28.2%	27.9%
2014	47.0%	21.7%	31.3%
2016	30.9%	40.5%	28.7%
2018	36.1%	32.2%	31.6%
2020	17.9%	38.4%	43.6%
2022	34.7%	29.70%	35.60%

The method of casting a vote remains consistently a key determining factor in the overvote and undervote rates. The overvote rate for the Gubernatorial contest was the lowest for all voting methods during the general election cycles starting with 2012 General Election cycle to the 2022 General Election cycle. See **Chart 2**, below.

Chart 2
Overvote Rate by Voting Method, 2012 - 2022

■ Pres 2012   ■ Gov 2014   ■ Pres 2016   ■ Gov 2018   ■ Pres 2020   ■ Gov 2022

Voting Method	Pres 2012	Gov 2014	Pres 2016	Gov 2018	Pres 2020	Gov 2022
Early Voting	0.15%	0.08%	0.08%	0.17%	0.08%	0.02%
Election Day	0.27%	0.14%	0.14%	0.29%	0.16%	0.04%
Vote-By-Mail	0.36%	0.38%	0.26%	0.38%	0.31%	0.06%

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[8] The 2020 election year, which coincided with the pandemic, saw a significant increase in vote-by-mail voting.

Notably, the undervote rate was the lowest or nearly the lowest in over a decade for all three voting methods. See **Chart 3** below.
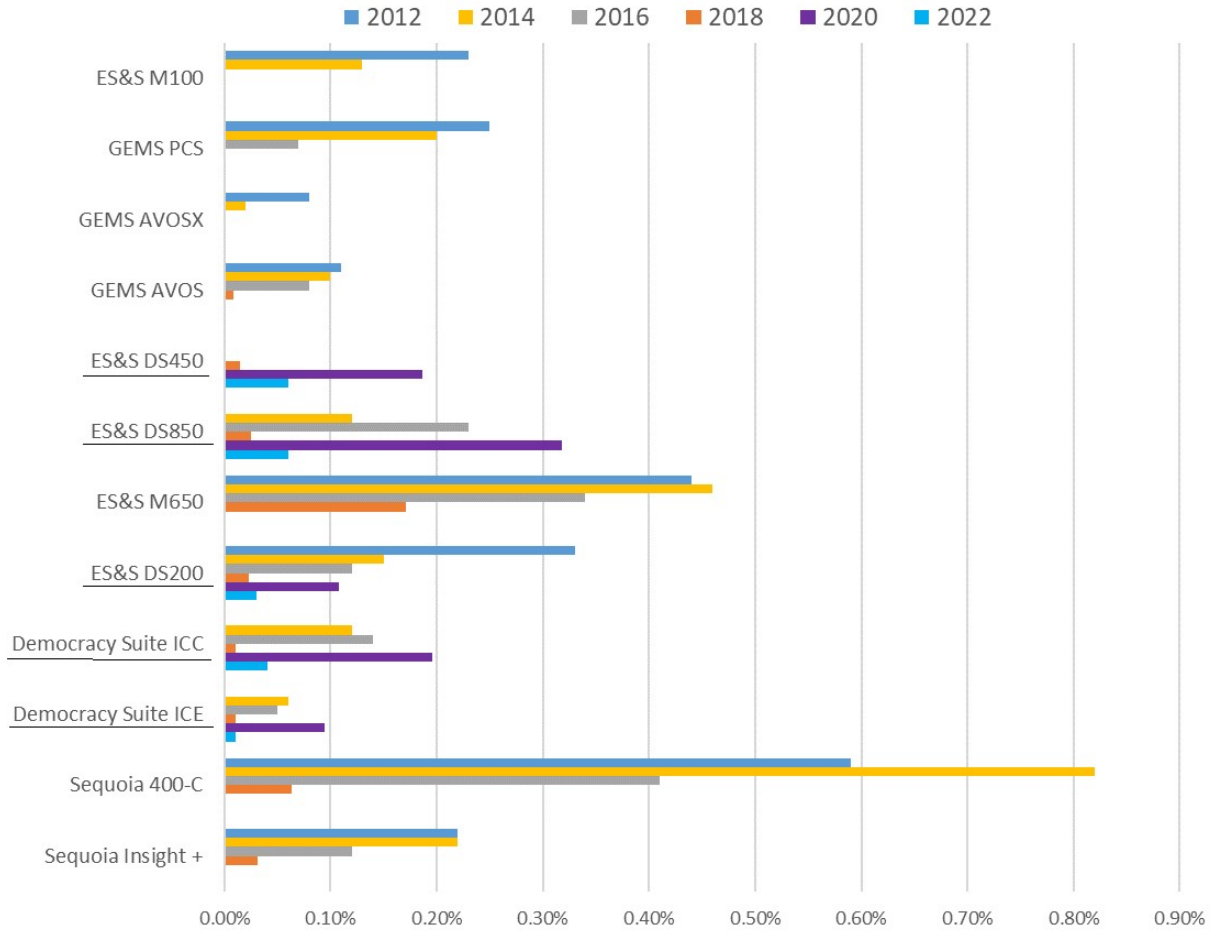
Chart 3
Undervote Rate by Voting Method, 2012 - 2022

■ Pres 2012 ■ Gov 2014 ■ Pres 2016 ■ Gov 2018 ■ Pres 2020 ■ Gov 2022
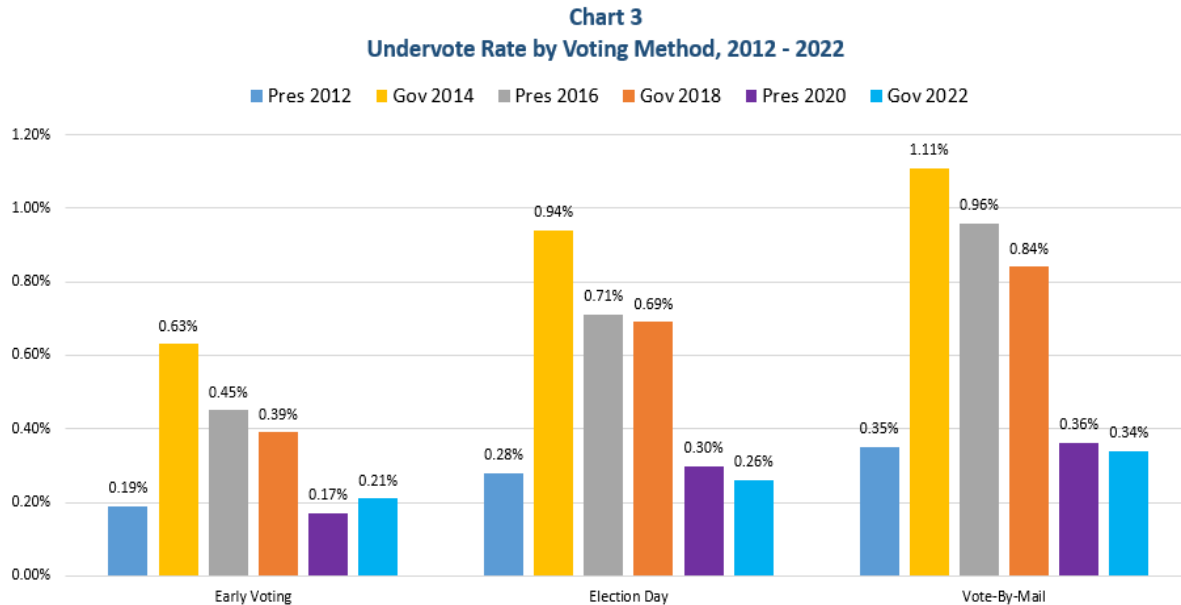
Overvote and Undervote Rate by Tabulator

The overvote rate in the 2022 General Election decreased from the 2020 General Election across all five tabulators currently certified for use. See underlined tabulators in **Chart 4**. It should be noted that the ES&S DS450, DS850, and DVS Democracy Suite ICC are used exclusively as central count tabulators. For this reason, the central count tabulators would see higher rates because those machine types processed almost all the vote-by-mail ballots and would tend to include more overvoted ballots. Many counties use the ES&S DS200 or the DVS Democracy Suite ICE precinct tabulators as a central count tabulator for processing vote-by-mail ballots which in turn can also explain the higher overvote rates seen in the chart below. There was no noticeable difference in the overvote rate between the different vendors' voting systems.

It should also be noted that an inherent bias continues to appear in actual overvote rates (or conversely higher than actual undervote rates) due to the current ballot duplication requirements in law. Specifically, section 101.5614(5), Fla. Stat., requires a vote-by-mail ballot with an overvoted contest to be duplicated as a ballot with only valid votes and the overvoted contest remade as a blank contest. This procedure skews the numbers of actual undervotes. Despite legislative changes in 2021[9], the bias remains. Further legislative clarification may be needed.

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[9] See s. 20, Chapter 2021-11, Laws of Florida

Chart 4
General Election Cycles 2012 - 2022
Overvote Rate by Tabulator

Legend: 2012, 2014, 2016, 2018, 2020, 2022

Categories (top to bottom):
- ES&S M100
- GEMS PCS
- GEMS AVOSX
- GEMS AVOS
- ES&S DS450
- ES&S DS850
- ES&S M650
- ES&S DS200
- Democracy Suite ICC
- Democracy Suite ICE
- Sequoia 400-C
- Sequoia Insight +

X-axis: 0.00%, 0.10%, 0.20%, 0.30%, 0.40%, 0.50%, 0.60%, 0.70%, 0.80%, 0.90%

The undervote rate by tabulator for the 2022 election continued the downward trend observed since 2018. All five of the tabulators used in 2022 had their lowest or nearly lowest undervote rates recorded in the last decade. There was no noticeable difference in the u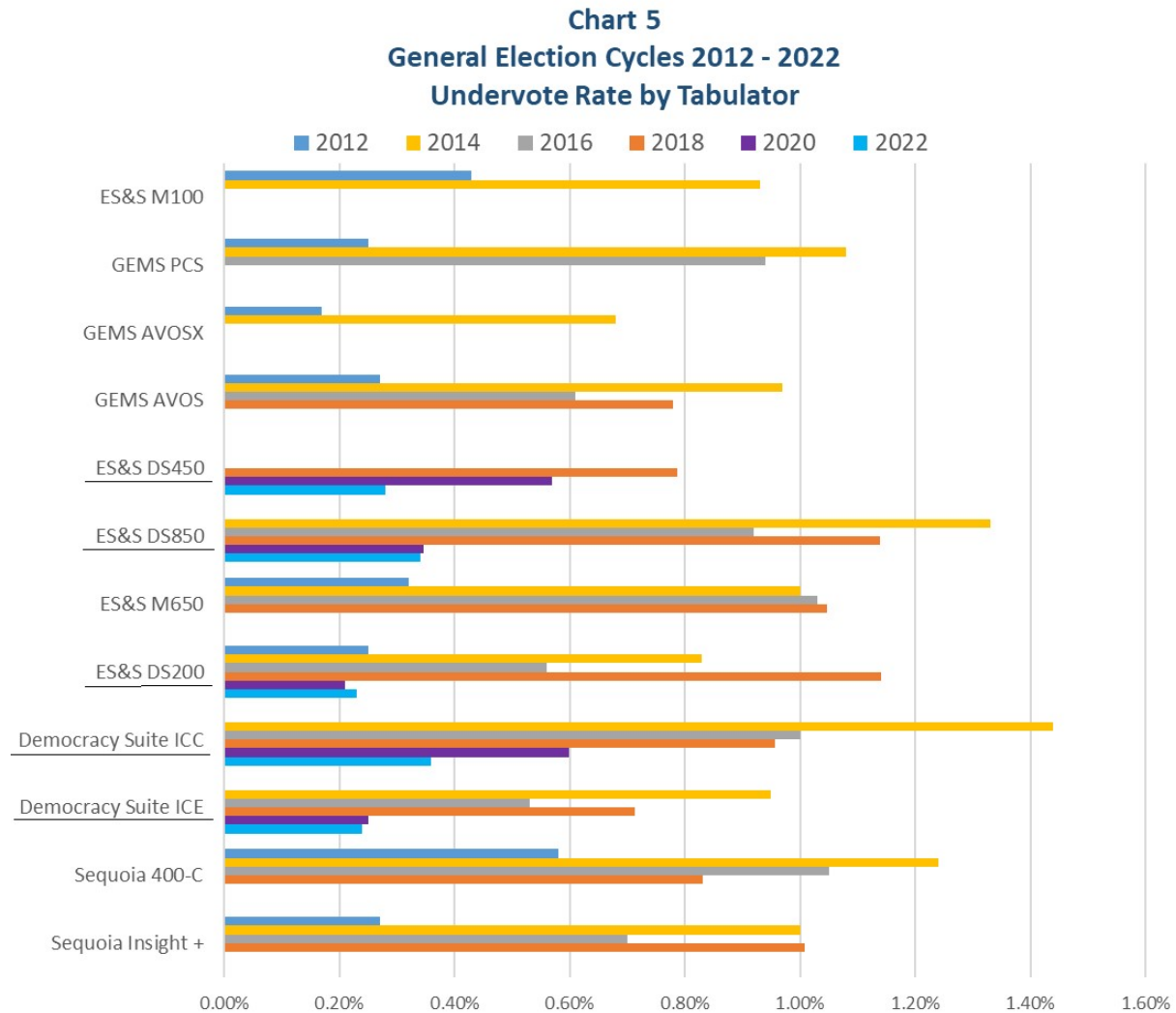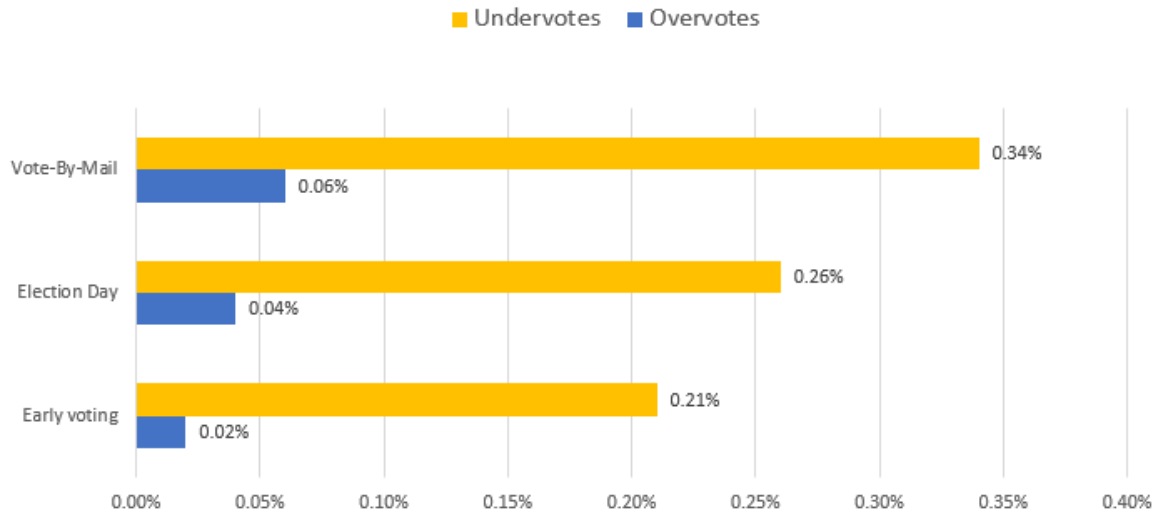ndervote rate between the different vendor's voting systems. See **Chart 5** below. Note: Underlined tabulators in Chart 5 are the only tabulators currently certified and in use in Florida Elections.

Chart 5
General Election Cycles 2012 - 2022
Undervote Rate by Tabulator

The method of voting a ballot remains consistently a key determining factor in the overvote and undervote rates. See **Charts 2 and 3** (mentioned earlier in the report) for an overview of the overvote and undervote rates for the 2022 Gubernatorial contest compared to data collected from previous elections. **Chart 6** below shows the overvotes and undervotes by voting method for 2022. As reported in previous reports, vote-by-mail ballots include the greatest number of overvotes and undervotes. A voter who votes in-person receives feedback or otherwise informed that he or she has undervoted or overvoted a race which

may reduce the number of overvotes and undervotes that are cast,[10] A voter who votes by mail does not receive any feedback or otherwise informed that he or she has overvoted a contest or undervoted a ballot.

Chart 6
2022 Gubernatorial Contest
Overvotes and Undervotes by Voting Method

■ Undervotes   ■ Overvotes

Voting Method	Undervotes	Overvotes
Vote-By-Mail	0.34%	0.06%
Election Day	0.26%	0.04%
Early voting	0.21%	0.02%

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[10] One of the primary requirements of an approved voting system is that it must be able to "immediately [reject] a ballot where the number of votes for an office or measure exceeds the number which the voter is entitled to cast or where the tabulating equipment reads the ballot as a ballot with no votes cast." See s. 101.5606(3), Fla. Stat. For an accessible voting system, the system must communicate to the voter the fact that the voter has failed to vote in a race or has failed to vote the number of allowable candidates in any race and require the voter to confirm his or her intent to undervote before casting the ballot. Additionally, the system must prevent the voter from overvoting any race. See s. 101.56062(1)(n)7. – 8., Fla. Stat.

Invalid Write-In Vote Rate

Chart 7 shows the invalid write-in votes[11] rate decreased since the 2020 General Election to effectively zero. The Invalid Write-in Rate appears to vary by election and does not seem to follow any identifiable trend.

Chart 7
General Election Cycles 2012 - 2022
Invalid Write-in Rate

Election	Rate
Pres 2012	0.21%
Gov 2014	0.24%
Pres 2016	0.86%
Gov 2018	0.08%
Pres 2020	0.18%
Gov 2022	0.00%
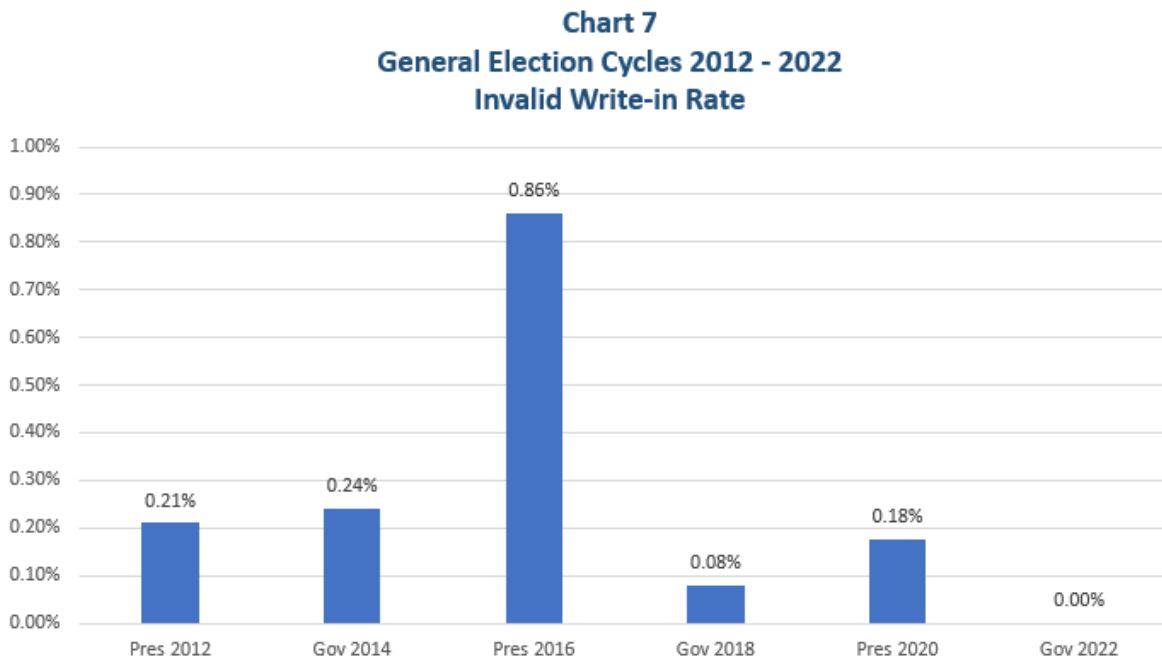
Overall Invalid Vote Rate

There is no discernable trend in the overall non-valid vote rates (i.e., composite of overvotes, undervotes, and invalid write-in votes) for the 2022 Gubernatorial contest when compared to the last five general elections. However, within tabulator types, the central count scanners demonstrate higher non-valid vote rates than their precinct-count counterparts. See **Table 2** below.[12] For example, the DVS Democracy Suite ICC rate is higher than that of the ICE. Similarly, the ES&S DS850 and DS450 rates are higher than that of the ES&S DS200. These results are consistent with the findings of previous reports that the non-valid vote rate is higher for vote-by-mail ballots processed by central count scanners, due to the lack of any mechanism to inform voters of the impending invalid vote prior to the casting of their ballot.

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[11] An invalid write-in vote may be due to voter error, such as unintentionally writing in a valid candidate's name from another contest, or intentionally writing in (as protest) "Mickey Mouse," "None of the above," "Anybody but [candidate]," or a fictitious name, or writing the name of a person who did not qualify as a candidate.
[12] Note: Underlined tabulators in Table 2 are the only tabulators currently certified and in use in Florida Elections.

Table 2
General Election Cycles 2012 - 2022
Non-Valid Vote Rate by Tabulator

Tabulators	2012 President	2014 Governor	2016 President	2018 Governor	2020 President	2022 Governor
Sequoia Insight +	0.61%	1.37%	1.40%	1.35%	-	-
Sequoia 400-C	1.33%	2.25%	2.19%	2.26%	-	-
Democracy Suite ICE	-	-	1.47%	0.75%	0.37%	0.26%
Democracy Suite ICC	-	-	2.30%	1.19%	1.35%	0.41%
GEMS AVOS	0.64%	1.42%	1.64%	0.68%	-	-
ES&S DS200	0.76%	1.15%	1.38%	0.82%	0.32%	0.27%
ES&S M650	0.98%	1.69%	2.27%	1.81%	-	-
ES&S DS850	-	-	2.59%	1.20%	1.05%	0.41%
ES&S DS450	-	-	N/A	1.09%	1.32%	0.28%
GEMS AVOSX	0.47%	0.96%	-	-	-	-
GEMS PCS	0.74%	1.56%	1.41%	-	-	-
ES&S M100	0.89%	1.42%	-	-	-	-
STATEWIDE	0.75%	1.36%	1.68%	1.00%	0.65%	0.31%

The statewide "non-valid vote" rate for 2022 is the lowest rate since 2012. See **Chart 8** below.

Chart 8
General Election Cycles 2012 - 2022
Non-Valid Vote Rate

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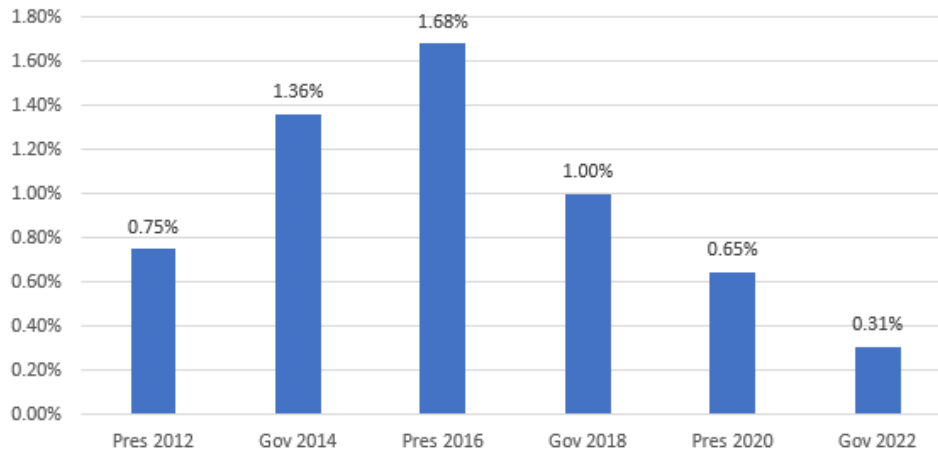
Ballot Design and Instructions/Voting System Anomalies

Section II of Form DS-DE 40, General Election Reports on Overvotes and Undervotes, contains multiple-choice boxes for counties to describe their ballot language design[13], instructions, and contest titles. See **Figure 1** below. The form was last revised before the 2020 Election Cycle. The revision focused how to better capture meaningful data as to ballot design, ballot instructions and if any, voting system anomalies that could have confused voters.

Figure 1. Form DS-DE 40 – "General Election Reports on Overvotes and Undervotes" – Ballot Design Section

SECTION II:		
Ballot Design		
The data in Section II is for ballot design only. Please put an "X" in all boxes that apply. Refer to the Instructions worksheet, if needed.		
Ballot Language		**Rule Deviations**
11 English only	19	There are more candidates than will fit in one column or screen
12 Multi-Language - All languages on one ballot		
13 Multi-Language - Each language on a separate ballot	20	The candidate's name is longer than will allow the party abbreviation to fit to the right of the candidate's name
Instructions		
14 Ballot Instructions - Across page - Centered	21	A candidate's name is too long to fit on one line in the minimum font size
15 Ballot Instructions - Across page - Flush Left		
16 Ballot Instructions - Leftmost Column	22	The party Abbreviation cannot be printed in the minimum font size without going onto a second line
Contest Title		
17 Contest Title - No Background	23	Printing the (Vote for X) designations in the minimum font size will require an additional ballot card
18 Contest Title - Shaded Background		
	24	The voting system will not permit the suppression of party abbreviations on ballots when a universal primary contest exists
	25	Any other extraordinary circumstances which cannot reasonably be accommodated except by deviation from the requirements of the rule. Describe in the Comments below.
Comments:		

A historical comparison of the overvote and undervote data consistently shows no demonstrable correlation that ballot design and/or instructions confused voters, or that the voting system manifested any anomalies. A breakdown of the responses pursuant to Section II follows:

- Ballot language. The official language for a ballot is English. However, counties subject to section 203 of the Federal Voting Rights Act and section 101.151, Fla. Stat., are required to provided multi-language on one ballot, with English appearing first. All other counties have the option to provide separate ballots for each language or all on the same ballot per Rule 1S-2.032, Fla. Admin. Code.

    - Forty-three counties provided a multi-language consolidated (all languages on one ballot) ballot.

    - Twenty-four counties provided a separate ballot for each language.

- Ballot Instructions. Current rule allows counties to either center their instructions across the top of the ballot or place instructions in the far left column of the ballot without any contests in that same column.[14]

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[13] Rule 1S-2.032, Fla. Admin. Code, provides the criteria for uniform ballot design and format and was last revised in April 2020.

[14] This specific requirement narrowing the options for ballot instruction placement was adopted into state law (section 101.151, Fla. Stat.) in 2019 and subsequently codified in rule.

- o Thirty-two counties centered their ballot instructions across the top of the ballot.

  - o Thirty-four counties reported the ballot instructions left-justified across the top of the ballot.

  - o Only one county reported the ballot instructions in the leftmost column.

- Contest Title. Current rule allows counties the option to have contest titles appear against no background or a lightly shaded background.

  - o Sixty-three counties shaded the background for contest titles while four counties did not.

- Ballot Deviation. Current rule allows counties to deviate from the uniform ballot design for seven specified reasons, including one for extraordinary circumstances that cannot otherwise be reasonably accommodated by rule.

  - o Two counties reported that their ballot design deviated from rule. Examples of reasons cited were related to font size.

None of the ballot design conditions reported gave any indication that they may have contributed to any voter confusion.

The law also specifically requires counties to report "the *likely* reasons for such overvotes and undervotes and other information as may be useful in evaluating the performance of the voting system and identifying problems with ballot design and instructions which *may* have contributed to voter confusion."[15] [emphasis added]. Therefore, section III of Form DS-DE 40, was revised in 2020 to better elicit from counties their opinions regarding possible factors affecting overvotes and undervotes, and correlation to vote confusion, if any existed. See **Figure 2**, below.

Figure 2. Form DS-DE 40 – "Over-Under Report" – Possible Factors Section

The form's instructions reminded respondents that "this section… is subjective or anecdotal in nature."

A breakdown of the responses pursuant to Section III follows based on 38 county responses:

- In the Voter Interest cluster, 26 counties reported that there appeared to be a high level of interest in the state contests.

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[15] § 101.595(1), Fla. Stat.

- In the Media Coverage cluster, respondents indicated that coverage across national and local media sources appeared to be more positive than negative.

- In the Voter cluster, there were reports of a large amount of literature or advertisements that were directed at voters and noted a generally positive perception of the election as a whole.

- "Natural Disaster" - six counties checked this box and indicated they faced complications from Hurricanes Ian and Nicole.

These generalized responses suggest that the Gubernatorial contest had high voter interest and media coverage. Natural disasters appeared to have been factors in the election. None of these responses indicate that there was voter confusion or voting system design or performance issues.

While the multiple-choice boxes were designed to be broad enough to fit any county-level election, the subjective data it yielded presented difficulties in drawing conclusions about the state's election, as a whole. The Division will be revisiting this section of Form DS-DE 40 to re-evaluate and, if practicable, revise to elicit more concrete/objective data.

Findings/Conclusion

1. Although both the overvote rate and undervote rate decreased in 2022 compared to previous overvote and undervote rates for general elections, the method of casting a vote remains a key determining factor in the overvote and undervote rates. The vote-by-mail voting method consistently produced a higher number of overvotes and undervotes than during early voting and Election Day. This is consistent with prior reports. More than any other factor surrounding the election environment, the voting method contributes most significantly to overvote and undervote rates.1

2. The compiled Gubernatorial contest data do not show anything to suggest or conclude that voter confusion existed during the election as a result of issues, if at all, with ballot design, ballot instruction issues, or voting equipment (design or performance). A historical overview of the overvote and undervote data consistently shows no demonstrable correlation as to issues with ballot design and/or instructions which confused voters, or manifestation of any anomalies with county voting systems.

3. As stated in previous reports, an inherent bias continues to exist in actual overvote rates (or conversely higher than actual undervote rates) due to the current ballot duplication requirements in law. Specifically, section 101.5614(5), Fla. Stat., requires a vote-by-mail ballot with an overvoted contest to be duplicated as a ballot with only valid votes and the overvoted contest remade as a blank contest. This procedure skews the numbers of actual undervotes.

4. Although the re-design of the General Election Report on Overvotes and Undervotes (Form DS-DE 40) attempted to elicit from counties the likely reasons for overvotes, undervotes, or voter confusion, the subjective data it yielded presented difficulties in drawing conclusions.

Recommendations

Based on the findings and conclusion, the Department makes the following recommendations:

1. To provide a more integrated meaningful report that may better identify potential issues, if any, or correlation between ballot design and instructions, and/or voting system design, and impact on the voters, a statutory change is recommended that combines into a single report data elements and information from the current overvote and undervote report and the conduct of

elections report submitted pursuant to s. 102.141, Fla. Stat., with the same due date (in lieu of two separate reports due at different times).

2. To elicit more objective data, and a better response rate, regarding likely reasons for overvotes and undervotes in a contest and how voting systems or ballot design and instructions may have contributed to voter confusion, if at all, the Department will review and, if practicable, modify the data collection tool (General Election Report on Overvotes and Undervotes, Form DS-DE 40).

Part II – Post-Election Voting System Audit Report

Introduction

Section 101.591, Fla. Stat., directs the Florida counties to report on the results of voting system audits conducted after certification of election results in a general election. The purpose of the audits is to identify the overall accuracy of the voting systems, a description of any problems or discrepancies, and any recommended actions with respect to avoiding or mitigating such circumstances in future elections. Each county has the option of conducting the audit by using either of the following methods:

- Manual Audit – A manual audit is a hand count of ballots of a randomly selected contest in at least one percent but no more than two percent of a county's randomly selected precincts.
- Automated Independent Audit – A county may use an approved system, that is completely independent of the voting system, to audit a random selection of at least 20% of its precincts.[16] The audit consists of a public tally of election day, absentee, early voting, provisional and overseas ballots in those randomly selected precincts.[17]

The detailed procedures for conducting a post-election audit are contained in DS-DE 410 "Procedures Manual for Post-Election Certification Voting System Audits", incorporated by reference into Rule 1S-5.026, Florida Administrative Code.[18] The counties use DS- DE 107, Voting System Post-Election Audit Report, regardless of the audit method conducted. See Appendix B. While conducting an audit, county must summary precinct information on distinct forms based on the type of audit conducted, i.e., a manual audit or an automated independent audit. See Appendix C (DS-DE 106, Precinct Summary for Manual Audit) and Appendix D (DS-DE 106A, Precinct Summary of Automated Independent Audit).

Regardless of audit methodology, an audit must be completed and made public no later than the 7th day after certification of election results. By law, if a county undertakes a manual recount, then the county does not have to conduct a voting system audit.[19] While canvassing boards are required to conduct audits after every election, counties are only required to report audit results for the regularly scheduled general election. Therefore, following the general election, each county canvassing board is required to provide to the Department a report with the results of the audit no later than December 15 after Election Day. The Department then consolidates the county information and identifies any trends that may indicate identifiable problems encountered during the audits. The Department's findings must be reported to the Legislature and the Governor by February 15th of the year following the general election in conjunction with the General Election Report on Overvotes and Undervotes.

Methodology

The 67 county Supervisors of Elections reported their raw audit data in a document designed for this purpose (Form DS-DE 107, Voting System Post-Election Audit Report, *also known as* the "Post-Election Audit Report"). During the data verification, reconciliation, and compilation process, counties were contacted as needed for explanations of any discrepancies or unusual entries.

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[16] In 2013, the Florida Legislature authorized the option for canvassing boards to use automated independent audit systems, in lieu of a manual recount, to satisfy the requirements of a post-election certification voting system audit. See section 10, chapter 2013-57, Laws of Florida

[17] Many counties will conduct an audit of all precincts if using the automated independent audit program.

[18] See www.flrules.org; https://www.flrules.org/gateway/reference.asp?No=Ref-14412

[19] §101.591(6), Fla. Stat.

A breakdown of the responses follows:

- Fifty-one counties conducted a manual audit.
- Eleven counties conducted an audit with an automated independent audit system.
- Five counties conducted a manual recount and, consequently, were not required by statute to conduct an audit.

Finding/Conclusion

For the General Election 2022, forty-two counties conducted a manual audit. Ten counties conducted an automated independent audit of the voting system.[20] Five counties had manual recounts which by law meant that they did not have to conduct also conduct a post-election certification voting system audit since a manual recount was conducted.[21] The overall accuracy of the manual audits was 99.99%, as was the overall accuracy of the automated independent audits (99.99%). Most discrepancies were attributed to human error in procedures. This could be addressed by more robust staff training and refresh on procedures.

Although the accuracy of both the manual and automated independent audits was 99.99%, an overall accuracy rate for the entire state cannot be determined. Those counties that conducted an automated independent audit are required to audit a larger number of precincts, and therefore a larger sample size of more ballots (20% or more of the county's precincts), than is required for a manual audit (1-2% of the county's precincts). A more comprehensive audit could lead to a wider disparity between the audit and the voting system's results, by increasing the likelihood of identifying differences. This could result in a lower overall accuracy rate for automated independent audits than for manual audits. Merging the results created by two distinct audit methodologies, including but not limited to, differing random selection percentage, does not give a true representation of the audit results across the state. For this reason, the audit results are reported and analyzed by audit method (shown as "Audit Type" in Table 3, following two pages).

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[20] Bay, Brevard, Citrus, Hernando, Hillsborough, Indian River, Leon, Levy, Nassau, Pinellas, and Putnam

[21] Broward, Duval, Monroe, Polk, and Santa Rosa

Table 3. Post-Election Audit Results by County

County	Audit Type	Overall Accuracy	Problems or Discrepancies	Cause	Corrective Action	Notes
Alachua	Manual	100%	None	N/A	N/A	
Baker	Manual	100%	None	N/A	N/A	
Bay	Auto	99.99%	More over votes recorded in tabulation than in Clear Audit	Human Error	N/A	
Bradford	Manual	100%	None	N/A	N/A	
Brevard	Auto	99.99%	Oval not filled in by voter as directed	Human Error	Educate Voters	
Broward	Recount	N/A	N/A	N/A	N/A	Manual recount was conducted so there wasn't an audit
Calhoun	Manual	100%	None	N/A	N/A	
Charlotte	Manual	100%	None	N/A	N/A	
Citrus	Auto	99.99%	None	N/A	N/A	
Clay	Manual	100%	None	N/A	N/A	
Collier	Manual	100%	None	N/A	N/A	
Columbia	Manual	100%	None	N/A	N/A	
Desoto	Manual	100%	None	N/A	N/A	
Dixie	Manual	100%	None	N/A	N/A	
Duval	Recount	N/A	N/A	N/A	N/A	Manual recount was conducted so there wasn't an audit
Escambia	Manual	100%	None	N/A	N/A	
Flagler	Manual	100%	None	N/A	N/A	
Franklin	Manual	100%	None	N/A	N/A	
Gadsden	Manual	100%	None	N/A	N/A	
Gilchrist	Manual	100%	None	N/A	N/A	
Glades	Manual	100%	None	N/A	N/A	
Gulf	Manual	100%	None	N/A	N/A	
Hamilton	Manual	100%	None	N/A	N/A	
Hardee	Manual	100%	None	N/A	N/A	
Hendry	Manual	100%	None	N/A	N/A	
Hernando	Auto	99.99%	None	N/A	N/A	
Highlands	Manual	99.99%	Audit picked up +1 for a candidate and -1 for another candidate	Unknown	N/A	one ballot was marked in pencil
Hillsborough	Auto	99.99%	None	N/A	N/A	
Holmes	Manual	100%	None	N/A	N/A	
Indian River	Auto	99.95%	None	N/A	N/A	
Jackson	Manual	100%	None	N/A	N/A	
Jefferson	Manual	100%	None	N/A	N/A	
Lafayette	Manual	100%	None	N/A	N/A	
Lake	Manual	100%	None	N/A	N/A	
Lee	Manual	99.96%	1 Off	Human Error	N/A	
Leon	Auto	100%	within .5% threshold	expected differences in vote tallies across a few contest	N/A	programming differences with tabulation, audit systems interpretation of poorly marked ballots.
Levy	Auto	100%	None	N/A	N/A	
Liberty	Manual	100%	None	N/A	N/A	No form attached, got #'s from the audit summary sheet
Madison	Manual	100%	None	N/A	N/A	
Manatee	Manual	100%	None	N/A	N/A	
Marion	Manual	100%	None	N/A	N/A	
Martin	Manual	100%	None	N/A	N/A	
Miami-Dade	Manual	99.99%	2 discrepancies, 1 precinct had 2 fewer ballots for ED	Pollworker error with a ballot jam or during ballot segregation	Reiterate Procedures with staff	
Monroe	Recount	N/A	N/A	N/A	N/A	Manual recount was conducted so there wasn't an audit

County	Audit Type	Overall Accuracy	Problems or Discrepancies	Cause	Corrective Action	Notes
Nassau	Auto	99.99%	A total of 72 vote differences were found between the audit and tabulation system. The 72 represents the number of ovals, not a number of ballots.	1 more ballot scanned into the audit sys due to DS200 jam	None	SOE believes jammed ballot & provisional were both counted.
Okaloosa	Manual	100%	None	N/A	N/A	
Okeechobee	Manual	100%	None	N/A	N/A	
Orange	Manual	100%	None	N/A	N/A	
Osceola	Manual	100%	None	N/A	N/A	
Palm Beach	Manual	100%	None	N/A	N/A	
Pasco	Manual	100%	None	N/A	N/A	
Pinellas	Auto	99.99%	None	N/A	N/A	
Polk	Recount	100%	None	N/A	N/A	Manual recount was conducted so there wasn't an audit
Putnam	Auto	100%	One race had a+1 and 2 raceshad +2	How the density levels are detected between audit & tabulator	N/A	
Santa Rosa	Recount	N/A	N/A	N/A	N/A	Manual recount was conducted so there wasn't an audit
Sarasota	Manual	99.70%	# of audited ballots didn't match # of ballots case	Possible EV ballots returned to the incorrect container	Review ballot storage procedure	
Seminole	Manual	100%	None	N/A	N/A	
St. Johns	Manual	100%	None	N/A	N/A	
St. Lucie	Manual	100%	None	N/A	N/A	
Sumter	Manual	100%	None	N/A	N/A	
Suwannee	Manual	100%	None	N/A	N/A	
Taylor	Manual	100%	None	N/A	N/A	
Union	Manual	100%	None	N/A	N/A	
Volusia	Manual	100%	None	N/A	N/A	
Wakulla	Manual	100%	None	N/A	N/A	
Walton	Manual	100%	None	N/A	N/A	
Washington	Manual	100%	None	N/A	N/A	

Recommendations

Based on the findings and conclusion, the Department makes the following recommendations:

1. To elicit more objective data, and a better response rate, regarding likely reasons for disagreements between the post-election audit and voting system results, if at all, the Department will review and, if practicable, modify the Post-Election Audit Report Form DS-DE 107.
2. To better account for the differences in the number of precincts required by the manual audit versus the automated independent audit, The Department will review and if practicable, modify the method of calculating the percentage of agreement between the post-election audit and voting system results.

Appendix A: DS-DE Form 40, General Election Report (form) on Overvote and Undervotes

GENERAL ELECTION REPORT ON OVERVOTES AND UNDERVOTES
(Section 101.595(1), Fla. Stat.) (Due by December 15th of General Election year)

FLORIDA DIVISION OF ELECTIONS

SECTION I:

The data in Section I pertains to this election.

General Election Year 1	2022	Provisional Ballots Accepted 6	
County Name 2		Provisional Ballots Rejected 7	
Registered Voters 3		Vote-by-Mail Ballots Requested 8	
Duplicated Ballots 4		Vote-by-Mail Ballots Accepted 9	
Blank Ballots 5		Vote-by-Mail Ballots Rejected 10	

SECTION II:
Ballot Design

The data in Section II is for ballot design only. Please put an "X" in all boxes that apply. Refer to the Instructions worksheet, if needed.

Ballot Language
11 English only
12 Multi-Language - All languages on one ballot
13 Multi-Language - Each language on a separate ballot

Instructions
14 Ballot Instructions - Across page - Centered
15 Ballot Instructions - Across page - Flush Left
16 Ballot Instructions - Leftmost Column

Contest Title
17 Contest Title - No Background
18 Contest Title - Shaded Background

Rule Deviations
19 There are more candidates than will fit in one column or screen
20 The candidate's name is longer than will allow the party abbreviation to fit to the right of the candidate's name
21 A candidate's name is too long to fit on one line in the minimum font size
22 The party Abbreviation cannot be printed in the minimum font size without going onto a second line
23 Printing the (Vote for X) designations in the minimum font size will require an additional ballot card
24 The voting system will not permit the suppression of party abbreviations on ballots when a universal primary contest exists
25 Any other extraordinary circumstances which cannot reasonably be accommodated except by deviation from the requirements of the rule. Describe in the Comments below:

Comments:

Section III:
Possible Factors Affecting Undervotes and Overvotes

Please put an "X" in all boxes that apply. Refer to the Instructions worksheet, if needed.

Voter Interest
26 Federal Contest - High
27 Federal Contest - Low
28 State Contest - High
29 State Contest - Low
30 Local Contest - High
31 Local Contest - Low
32 Amendment - High
33 Amendment - Low
34 Referendum - High
35 Referendum - Low

Media Coverage
36 National - High Level
37 National - Low Level
38 National - Positive Coverage
39 National - Negative Coverage
40 Local - High Level
41 Local - Low Level
42 Local - Positive Coverage
43 Local - Negative Coverage

Voter
44 Voter Literature/Advertisement - High
45 Voter Literature/Advertisement - Low
46 Election Perception - Positive
47 Election Perception - Negative

Voting System
48 Voter Instruction Issue
49 Voting Equipment Issue
50 New Voting System

Other
51 Natural Disaster
52 Other: Please Explain

Comments:

SECTION IV:
Report Results for: **Governor and Lieutenant Governor**

*The data in Section IV is for **this race** only. Please fill in all numbered boxes. Refer to the Instructions worksheet, if needed.*

NOTE: Only totals from the Election Day Database should be used. **Do Not** use totals from machine or manual recount.

	Are Provisional ballots included in Group Totals (EV, ED, VBM)	Total # of Votes cast including all write-ins	Undervotes Do Not Include in "A"	Overvotes Do Not Include in "A"			Valid Write-In	Invalid Write-In
	Check if Yes	A	B	C			E	F
Early Voting	53 ☐	54	55	56			57	58
Election Day	59 ☐	60	61	62			63	#
Vote-by-Mail	65 ☐	66	67	68			69	70
Provisionals Accepted		71	72	73	←	G	74	75
Column total		A	B	C		D	E	F

Grand Total = Sum of cells A + B + C
Grand Total =

Section V: County Comments For **Governor and Lieutenant Governor** Race

DS-DE 40, rev. 11/2022

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Appendix B: DS-DE 107 - Voting System Post-Election Audit Report

Voting System Post-Election Audit Report

County:_____ Date of Election:_____

Type of Audit (check applicable box): ☐ Manual ☐ Automated Independent

Precinct Number(s):_____

Race (if Manual Audit): _____

1. Overall accuracy of the audit:

2. Description of any problems or discrepancies encountered:

3. Likely cause of such problems or discrepancies:

4. Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections:

Check applicable box and sign below:

☐ We hereby certify that the report of the voting system audit performed for the election is accurate and that attached are precinct summary reports for each precinct audited.

☐ We hereby certify that a voting system audit was not done because a manual recount was conducted under s. 102.166, Florida Statutes.

Signatures of County Canvassing Board members:

_____	_____	_____
Printed Name	Signature	Date
_____	_____	_____
Printed Name	Signature	Date
_____	_____	_____
Printed Name	Signature	Date

Rule 1S-5.026, F.A.C.   DS-DE 107 (eff. 01/2014)

Appendix C: DS-DE 106 - Precinct Summary for Manual Audit

Precinct Summary for Manual Audit

Race Audited: _____

Precinct Number: _____

Candidate Name or Issue Choice	Voting System Total	Manual Public Tally Total	Difference (+ or −)

Number of ballots overvoted: _____

Number of ballots undervoted: _____

Number of indeterminate votes: _____

(Attach a separate Precinct Summary for each precinct audited.)

Rule 1S-5.026, F.A.C.   DS-DE 106 (eff. 01/2014)

Appendix D: DS-DE 106A - Precinct Summary for Automated Independent Audit

Discrepancy Report for Automated Independent Audit

(**NOTE**: *This report is required only when the automated tally and official totals show a discrepancy in any contest of ½ of 1% or more of the votes being audited.*)

County: _____ Precinct: _____

Ballot type: _____

Race: _____

Candidate or Issue	Audit System Adjudicated Votes ❶	Audit Indeterminate Votes	Canvassing Board Adjustments ❷	Audit Total Votes ❶+❷=❸	Certified Results Total = ❹	Difference = ❹-❸ (+ or −)
Number of overvotes						
Number of undervotes						

Note: See definitions of terms on next page. Next page is <u>not</u> to be submitted with this page.

DEFINITIONS FOR FORM DS-DE 106A

(**NOTE**: Do <u>not</u> submit when submitting first page of Form DS-DE 106A)

Audit Indeterminate Votes = number of votes where a marginal on a ballot caused the Canvassing Board to believe that the voting system may not have tabulated a choice in a race.

Audit System Adjudicated Votes = number of votes where the audit system assessed a valid vote.

Audit Total Votes = the sum of Audit Valid Votes and Canvass Board Manual Adjustments.

Ballot Type = the method of voting, *e.g.,* Election Day (in person) voting, Absentee (*i.e.,* Vote-by-Mail), Early Voting, Other (Military and Overseas).

Canvassing Board Adjustments = net number of votes where the canvassing board determined that the voting system should have tabulated a marginal mark as a choice in a race.

Certified Results Total = the number representing the official certified results (votes) reported for the race by ballot type and appropriate precincts.

Difference = the number representing the difference in the calculation: Certified Results Total minus Audit Total Votes.

Overvotes = the number representing those votes where the voter marks or designates more names that there are person to be elected to an office or designates more than one answer to a ballot question, and the tabulator records no vote for the office or question.

Undervotes (*i.e.,* blank votes) = the number representing those votes where the elector does not properly designate <u>any</u> choice for an office or ballot question, and the tabulator or audit system records no vote for the office or question.