

**Leon County
Board of County Commissioners**


Notes for Agenda Item #22

Leon County Board of County Commissioners

Cover Sheet for Agenda #22

September 20, 2016

To: Honorable Chairman and Members of the Board

From: Vincent S. Long, County Administrator 

Title: Consideration of Full Board Appointment of a Commissioner to the Canvassing Board

County Administrator Review and Approval:	Vincent S. Long, County Administrator
Department/ Division Review:	Alan Rosenzweig, Deputy County Administrator
Lead Staff/ Project Team:	Heather Peeples, Special Projects Coordinator

Fiscal Impact:

This item has no fiscal impact to the County.

Staff Recommendation:

Option #1: Appoint Commissioner Maddox as a Substitute Member to the Canvassing Board.

Report and Discussion

Background:

On September 13, 2016, Chairman Proctor notified the Chairman of the Leon County Canvassing Board that he would be resigning (Attachment #1). Consequently, the Board must appoint a substitute member who will serve in the place of the Chairman in a permanent capacity. Based upon the County Attorney's analysis of Florida Statute, Commissioner Maddox appears to be the only eligible Commissioner able to serve (Attachment #2).

According to Section 102.141 (Attachment #3), Florida Statutes, each county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners. Additionally, each board of county commissioners must appoint a substitute member, and the chair of the board of county commissioners must appoint an alternate member.

During the Board's January 24, 2016 meeting, Commissioner Dailey was appointed the substitute member of the Canvassing Board and Commissioner Maddox was appointed the alternate member. The Supervisor of Elections has since resigned from serving on the Canvassing Board, and Commissioner Dailey was selected to serve as his substitute.

Analysis:

In a memo to the County Administrator dated September 16, 2016, the County Attorney provides a detailed analysis of the required appointments to the Canvassing Board. As stated in the memo, the Board is required to appoint a substitute member for the Canvassing Board to fill the Chairman's position. The substitute member cannot be an opposed candidate in the election or actively participating in a campaign of an opposed candidate in the election. If the Board appoints Commissioner Maddox, who is presently serving as an alternate member of the Canvassing Board, the Chairman must make an appointment to fill this vacancy. The Chairman may appoint a Commissioner or qualified elector of the County to serve as the alternate member.

Staff recommends that the Board appoint Commissioner Maddox as a substitute member to the Canvassing Board. In the event that there are no eligible Commissioners able to serve as substitute member then, according to Florida Statute, the Chief Judge appoints a qualified elector of the County.

Options:

1. Appoint Commissioner Maddox as a substitute member to the Canvassing Board.
2. Board direction.

Recommendation:

Option #1.

Attachments:

1. Chairman Proctor Resignation Letter
2. Memo from the County Attorney
3. Section 102.141, Florida Statute



Bill Proctor
Chairman
Commissioner • District 1

September 13, 2016

Honorable Augustus Aikens
Chairman, Leon County Canvassing Board
Tallahassee, FL 32301

Dear Judge Aikens:

Given the current crisis of low voter participation juxtaposed to the reality of America's potential future leaders, I am compelled to resign from the Leon County Canvassing Board.

Both past history and the present need me at street level to actively promote voting for November's election. I want to be on the playing field and not in the scorer's box as the contest before us in November is quickly upon us. I believe our alternate member, Commissioner Nick Maddox, will do an outstanding job.

You have done an outstanding job as Chairman. Thank you for your continued leadership of the Leon County Canvassing Board.

But, for now, I must join the fight for voter engagement. I have to make a difference in the 2016 election process.

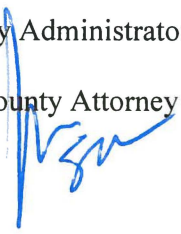
Sincerely,

Bill Proctor

BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: Vincent S. Long, County Administrator
FROM: Herbert W.A. Thiele, County Attorney
DATE: September 16, 2016
SUBJECT: Canvassing Board



VIA ELECTRONIC MAIL

The Leon County Canvassing Board is currently comprised of Judge Aikens, serving in the County Court Judge statutory role and as chairman of the Canvassing Board; and Commissioner Dailey, serving as Supervisor of Elections, Ion Sancho's, substitute. Commissioner Dailey was appointed to serve as the BOCC's substitute on January 26, 2016. When the Supervisor of Elections became disqualified to serve, Commissioner Dailey was selected to serve as his substitute. As of September 13, 2016, Chairman Proctor served as the Canvassing Board's third member.

However, Chairman Proctor has recently resigned from the Canvassing Board to pursue greater voter participation in the 2016 general election. A copy of Chairman Proctor's memorandum is attached hereto for ease of consideration. When the Chair of the BOCC is "unable to serve" or "disqualified," the BOCC appoints another eligible member of the BOCC to serve as the Chairman's substitute. Therefore, the BOCC must make a Board appointment for the substitute that shall serve in place of the Chairman in a permanent capacity.

The Leon County Canvassing Board also currently has two alternates. One is Judge Flury and the second is Commissioner Maddox. If Commissioner Maddox is appointed by the BOCC as the Chairman's substitute, Chairman Proctor must make an individual appointment of another alternate to replace Commissioner Maddox.

Rule of Law

The composition of the Canvassing Board is governed by Section 102.141, Florida Statutes (2016). Membership of the Canvassing Board shall consist of a County Court Judge, who is required to serve as Chairman of the Canvassing Board, the Supervisor of Elections, and the Chair of the Board of County Commissioners. *See* Section 102.141(1), Florida Statutes (2016).

In the event that a Canvassing Board member is unable to serve, a substitute member shall be selected to replace the member. More specifically, when no County Court Judge is able to serve, the Chief Judge shall appoint as a substitute a qualified elector of the County who is not an opposed candidate and who is not actively participating in a campaign of an opposed candidate in the election. If the Supervisor of Elections is unable to serve, the Chair of the BOCC is required to appoint as a substitute, a member of the BOCC who is not a candidate opposed in the election and who is not actively participating in a campaign of an opposed candidate in the election. If the Chair of the BOCC is unable to serve, the BOCC shall appoint as a substitute another member of the BOCC who is not an opposed candidate and who is not actively participating in a campaign of an opposed

candidate in the election. In the event 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 who is not an opposed candidate in the election, and who is not actively participating in a campaign of an opposed candidate in the election. See Section 102.141(1)(a)-(d), Florida Statutes.

Therefore, each Canvassing Board member has a designated appointed substitute in the event that the member is "unable to serve" or is "disqualified." The substitute member permanently replaces the statutory member of the Canvassing Board. The substitutes for each of the members of the Canvassing Board are appointed as follows:

Substitute Membership

Statutory Member of County Canvassing Board	Substitute Member
County Court Judge	Chief Judge appoints a qualified elector ¹
Supervisor of Elections	Chair of BOCC appoints Member of BOCC ²
Chair of BOCC	BOCC appoints a member of the BOCC

The County Canvassing Board is also required to have two alternates. The alternates serve in the place of a member in a temporary capacity in the event a statutory or substitute member cannot attend a Canvassing Board meeting or for a temporary period of time. Should a member be unable to attend, the chairman of the Canvassing Board designates which of the two alternates shall sit in the place of the absent member. One alternate is appointed by the Chief Judge and the second alternate is appointed by the Chairman of the BOCC.³

Alternate Membership

Statutory Member to Appoint Alternate	Alternate to Serve
Chief Judge	County Judge
Chair of BOCC	Member of BOCC

¹ In the event no County Court Judge can serve on the Canvassing Board, the members of the Canvassing Board vote to elect the chairman of the Canvassing Board. § 102.141(1)(a) F.S.

² The Supervisor of Elections shall continue to serve in an advisory capacity to the Canvassing Board. § 102.141(1)(b) F.S.

³ As stated in *Division of Elections Opinion DE 15-03* (October 26, 2015):

The Division [of Elections] 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.

Vincent S. Long, County Administrator
September 16, 2016
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Therefore, it is the opinion of this office that as a result of the Chair of the BOCC being unable to serve on the Canvassing Board, as set out in the Chairman's memorandum of September 13, 2016, to the Chairman of the Leon County Canvassing Board, the Honorable Augustus Akins, the BOCC is required to appoint a substitute member for the Canvassing Board to fill the Chair of BOCC, position. In the event that the BOCC selects Commissioner Nick Maddox, who is presently serving as an alternate member of the Canvassing Board, as the substitute for the Chair of the BOCC, that would leave an alternate position open for appointment. As for an alternate member of the Canvassing Board, the Chair of the BOCC is required to appoint either a member of the BOCC or if each member of the BOCC is unable to serve or is disqualified, appoint a qualified elector of the County who is not a candidate with opposition in the election nor an active participant in the campaign or candidacy of a candidate with opposition in the election.

While use of the term "active participant" is not defined by the Election Code, the Division of Elections has addressed being disqualified to be a member of the Canvassing Board as a result of being an "active participant" in the campaign or candidacy of any candidate with opposition in the election. For example, in *Division of Elections Opinion DE 09-07* (October 15, 2009), it was determined that 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." *Id.*

Therefore, we recommend that an item be presented as an add-on for the Board meeting of September 20, 2016, for the Board to appoint a substitute for the Chair of the BOCC to act as a substitute to the statutory member of the Canvassing Board, and for the Chair of the BOCC to appoint an alternate.

HWAT/PTK/kam

Enclosure

cc: Honorable Chairman and Members of the Board of County Commissioners
Judge Jonathan Sjostrom, Chief Judge
Canvassing Board
Alan Rosenzweig, Deputy County Administrator



Bill Proctor
Chairman
Commissioner • District 1

September 13, 2016

Honorable Augustus Aikens
Chairman, Leon County Canvassing Board
Tallahassee, FL 32301

Dear Judge Aikens:

Given the current crisis of low voter participation juxtaposed to the reality of America's potential future leaders, I am compelled to resign from the Leon County Canvassing Board.

Both past history and the present need me at street level to actively promote voting for November's election. I want to be on the playing field and not in the scorer's box as the contest before us in November is quickly upon us. I believe our alternate member, Commissioner Nick Maddox, will do an outstanding job.

You have done an outstanding job as Chairman. Thank you for your continued leadership of the Leon County Canvassing Board.

But, for now, I must join the fight for voter engagement. I have to make a difference in the 2016 election process.

Sincerely,

Bill Proctor

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Tallahassee, Florida 32301
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(850) 606-5361
FAX: (850) 606-5303

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September 15, 2016

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The 2016 Florida Statutes

Title IX	Chapter 102	View Entire Chapter
ELECTORS AND ELECTIONS	CONDUCTING ELECTIONS AND ASCERTAINING THE RESULTS	

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.