

Notice of Proposed Rule

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1S-2.009 Constitutional Amendment by Initiative Petition

PURPOSE AND EFFECT: The purpose of rulemaking is to conform the rule to statutory changes in HB 5 (Chapter 2019-64, Laws of Florida) which amends sections 97.021 and 100.371, Florida Statutes. The law, among other things, requires paid petition circulators to register with the Secretary of State; requires petition forms to be made available to constitutional amendment initiative petition sponsors; requires the Secretary to maintain a paid petition circulator database; requires supervisors of elections to provide specified information to the division of elections; provides requirements for gathering petition forms; provides for the imposition of fines for failure to deliver petition forms within a specified time period and provides for defenses; allows the Secretary of State to refer petition form violations to the Attorney General for enforcement; requires the division of elections to adopt rules; and provides that the date the elector signs a petition form is presumed to be the date the sponsor collected the form. The changes to the rule are to incorporate these various changes in the law.

SUMMARY: Constitutional amendment by initiative petition and related processes for petition circulators, supervisors, and the division of elections.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: This rule will not require legislative ratification pursuant to Section 120.541(3), F.S., because the rule applies only to election-related activities. Based upon past experiences with rules of this nature, this rule will not have an adverse effect on businesses or private-sector economic growth, job-creation, employment or investment; it is not likely to have an adverse impact on business competitiveness nor innovation in excess of the statutory threshold; nor will it increase regulatory costs in excess of the threshold mandating legislative ratification. No other statute requires legislative ratification for this rule.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 20.10, 97.012(1), (2), 97.052, FS.

LAW IMPLEMENTED: 97.021, 100.371, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Candice Edwards at (850)245-6536 or Candice.edwards@dos.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Colleen O'Brien, Assistant General Counsel, at Colleen.O'Brien@dos.myflorida.com or (850)245-6519.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.009 Constitutional Amendment by Initiative Petition.

(1) Forms. All forms referenced herein are incorporated by reference and are available online on the Division of Elections' website at <https://www.dos.myflorida.com/elections> under the header for forms, through the rule as adopted under www.flrules.org, or from the Florida Department of State, Division of Elections, Room 316, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, 32399-0250, (850)245-6200.

~~(2)(1) Submission of Initiative Petition Approval Process.~~

~~(a) Submission.~~ Before a petition to place a proposed amendment to the State Constitution on the ballot by initiative can be circulated for signatures, the sponsoring political committee must receive approval of the initiative petition ~~format of the proposed form~~ from the Secretary of State. The sponsoring committee shall email submit a written request that includes the proposed language to DivElections@DOS.MyFlorida.com. for review, along with a copy of the proposed form, to the Secretary of State.

~~(b)(2) Requirements and Approval of Initiative Petition Form.~~

~~1.(a)~~ The Secretary of State shall review the initiative petition form solely for sufficiency of the format and shall render a decision within seven (7) days following receipt.

~~2. The proposed language submitted by the sponsoring political committee shall consist of the following:~~

~~(b) The format of an initiative petition submitted for review and approval by the Secretary of State shall be in accordance with Form DS DE 19 (effective 05/2014; <https://www.flrules.org/gateway/reference.asp?No=Ref-04015>), entitled "Constitutional Amendment Petition Form" and the requirements of this rule. Form DS DE 19 is hereby incorporated by reference and is available from the Florida Department of State, Division of Elections, Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399 0250, (850)245 6500, or by download from the Division of Elections' rules webpage at: <http://election.dos.state.fl.us>. The format of the petition form is deemed sufficient only if the petition form:~~

~~1. Is printed on separate cards or individual sheets of paper. The minimum size of such forms shall be 3 inches by 5 inches and the maximum shall be 8 1/2 inches by 11 inches.~~

~~2. Clearly and conspicuously contains in the following order:~~

~~a. The title "Constitutional Amendment Petition Form" at the top of the form.~~

~~b. The three statements as exactly worded in the box on the top of Form DS DE 19.~~

~~c. Adequate blank lines for the voter's name, address, city, county, voter registration number and date of birth as specified on the DS DE 19.~~

~~d. A check box and accompanying text so the voter may indicate a change in the voter's legal residence address on the voter's voter registration record as specified on the DS DE 19.~~

~~e. The statement, "I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election."~~

~~af. The ballot title, which shall not exceed 15 words.~~

~~bg. The ballot summary, which shall not exceed 75 words.~~

~~ch. The article and section being created or amended in the State Constitution. For each existing article and/or section being amended, the language shall be in the format "Amends Article [insert number], Section [insert number]." The article and section number provided must correspond to an existing section of the Constitution and must correspond with the full text of the proposed amendment. For each article and/or section being created, the language shall be in the format, "Creates Article [insert], New Section."~~

~~di. The full text of the amendment being proposed. If the proposed constitutional amendment amends an existing section or sections, the full text shall include the entire existing text of the section or sections being amended. Text that is being inserted into the Constitution shall be notated with an underline, and text that is being deleted shall be notated with a strike through. If the text must be printed on both sides of the form, it shall be clearly indicated that the text is continued or begins on the other side.~~

~~j. Adequate blank lines for the date of the voter's signature and the voter's signature. The petition shall contain a blank line for only one voter's signature. The Secretary of State will not approve petition forms providing for multiple signatures per page.~~

~~k. A disclaimer that states "Initiative petition sponsored by (name and address of the sponsoring political committee)."~~

~~l. Adequate blank lines, in accordance with Section 106.19(3), F.S., for the name and address of a paid petition circulator, if one is used.~~

~~m. The notation "For Official Use Only" as specified on Form DS DE 19 providing adequate blank lines labeled "Serial Number" and "Date Approved."~~

~~(e) The petition need not contain the designation of Form DS DE 19 and its effective date or the reference to this rule as shown on the sample Form DS DE 19.~~

~~(3)~~ Word Count. The following provisions apply to determine the word count for a ballot title and summary:

~~(a)~~ Hyphenated compound words count as two or more words.

~~(b)~~ An ampersand or a plus or minus sign shall count as one word.

~~(c)~~ Punctuation such as commas, periods, hyphens, question marks, parentheses, quotation marks or exclamation points, does not affect the word count.

~~(d)~~ Each word joined by a forward or back slash to another word counts separately as a word.

~~(e)~~ Each part of a date counts as one word. Example: January 1, 2025 shall count as three words.

~~(f)~~ Each word in a name is individually counted. Example: George Washington shall count as two words.

~~(g)~~ Each whole number shall count as a word.

~~(h)~~ Spaces do not affect the word count.

~~(4) Additional Information or Materials. Other than providing information or a method by which the petition form may be returned by mail to the sponsoring committee, no additional information or materials shall be printed directly on the form.~~

(c) Approved Petition Forms.

1. Upon approval of the format of an initiative petition, ~~(5) Assignment of a Serial Number.~~ The Secretary of State shall assign a serial number to each approved ~~the~~ petition form. The serial number shall begin with the last two digits of the calendar year in which the petition form is approved followed by a number in numerical sequence. For example, the first petition form approved in 2020 ~~is~~ is assigned the serial number 2020-01. The serial number assigned and approval date must ~~will~~ be printed in the designated location on the ~~lower right hand corner of the petition forms~~ as described below.

2. Upon assignment of a serial number, the Division shall include, in the designated spaces:

a. On Constitutional Amendment Petition Forms: the ballot title, ballot summary, serial number and date approved, and name and address of the sponsoring committee on Form DS-DE 155A (effective XX/XXXX; [insert form reference link]) entitled “Constitutional Amendment Petition Form – Volunteer.” The form number, effective date, and reference to this rule need not appear on the form. An electronic copy in PDF format, suitable for use by volunteers or directly by voters, shall be provided to the sponsoring political committee and made available on the Division’s website. Paid petition circulators, as defined below, will obtain their forms, Form DS-DE 155B (effective XX/XXXX; [insert form reference link]) entitled “Constitutional Amendment Petition Form – Circulator” directly online in PDF format once they are registered with the Division pursuant to subsection (3).

b. On Constitutional Amendment Full Text Forms: the ballot title, ballot summary, article and section being created or amended, full text of the proposed amendment, serial number and date approved, and name and address of the sponsoring committee on a supplemental Form DS-DE 156 (effective XX/XXXX; [insert form reference link]) entitled “Constitutional Amendment Full Text.” The form number, effective date, and reference to this rule need not appear on the form. An electronic copy shall be provided to the sponsoring political committee and made available on the Division’s website. If the full text of the proposed amendment fits on a single page, it shall be clearly indicated with page numbers in the following format: Page 1 of 1” as indicated on the DS-DE 156 form. If the full text of the proposed amendment does not fit on a single page, the language can extend onto the reverse side of the paper or onto multiple sheets of paper. In such a case, the box entitled “Initiative Information” shall appear at the bottom of each page. In addition, it shall be clearly indicated that the form is multiple pages in length with page numbers in the following format: “Page [current page] of [total number of pages]” as indicated on the DS-DE 156 form. Wherever the DS-DE 155A or DS-DE 155B forms are circulated for signature, a copy of the full text of the associated proposed amendment on DS-DE 156 shall also be provided or displayed to show the voter before signing the petition

~~(3)(6)~~ Changes. Any change to a previously approved petition form shall be submitted to the Secretary of State for review. No person or entity other than the sponsoring political committee of the previously approved petition form can submit a change or changes to the previously approved petition form. The Secretary of State must approve any material change to a previously approved petition form. A material change constitutes a change in the wording of the text of the proposed amendment, the ballot title, or ballot summary, or a change in punctuation or layout, or a change in the name of the sponsoring political committee. Any material change submitted for approval to a previously approved initiative petition constitutes a request for approval of a new petition form and shall be assigned a different serial number upon approval by the Secretary of State.

(4) A sponsoring political committee may also seek to circulate its petition in Spanish or another language. If requested by the sponsoring political committee, the Division will have the petition translated into Spanish, or another language (if shown to have a reasonable basis for requesting such other language). A translation into another language does not constitute a material change to an initiative petition form. If translated into another language, the translation must not add or subtract from the approved English language and format of the petition and its blank entries. Any material change submitted for approval to a previously approved initiative petition constitutes a request for approval of a new petition form and shall be assigned a different serial number upon approval by the Secretary of State.

(5)(7) Reproduction. Petition forms may be reproduced in newspapers, magazines, and other forms of printed mass media, ~~or~~ made available through the internet for download printing, or mailed directly to voters, provided such forms are reproduced in the same format as approved by the Secretary of State. The petition forms may be included within a larger advertisement, provided the forms are clearly defined by a solid or broken line border.

(6) Petition Circulators.

(a) Paid Petition Circulator. An individual who collects signatures for compensation for the purpose of qualifying a proposed constitutional amendment for ballot placement is herein referred to as a “paid petition circulator.” A paid petition circulator must register with the Division of Elections. To register, the person or entity must submit an online registration application through the Division’s petition circulator portal at <https://dos.elections.myflorida.com/InitiativePetitions/InitiativePetitionsPublic>.

1. The paid petition circulator must provide name, permanent address, temporary address, if applicable, and date of birth. Additionally, if the permanent address is not a Florida address, the paid petition circulator must provide a Florida address at which the circulator will accept service of process. The paid petition circulator must select each approved initiative petition for which the circulator is being paid to collect signatures. The paid petition circulator must email the Division of Elections at DivElections@DOS.MyFlorida.com with any changes to name, permanent address, and temporary address that occur subsequent to initial registration.

2. The Division of Elections shall assign a login account. The paid petition circulator shall be assigned a unique paid petition circulator registration number. If the petitions for which the petition circulator is registered are closed, and the petition circulator is no longer registered for any petitions, the Division will notify the petition circulator via the email address used by the paid petition circulator to register and inquire of the circulator’s intent to remain registered. If the Division does not receive a response from the paid petition circulator within 10 days, the paid petition circulator’s online registration will expire. The paid petition circulator may re-register at any time.

3. Once registered, a paid petition circulator can obtain electronic copies of DS-DE 155B and DS-DE 156 forms from the Division by logging into the petition circulator portal available on the Division’s website. The portal will provide each petition circulator with electronic copies of DS-DE 155B forms in PDF format that provides the circulator’s information in the designated spaces on the form. The DS-DE 155B petitions provided to the circulator will be uniquely marked for that circulator. The circulator is then responsible for producing physical copies from the electronic file.

(b) Volunteer Petition Circulators. All other individuals who collect signatures, but not for compensation, for the purpose of qualifying a proposed constitutional amendment for ballot placement are not required to register with the Division of Elections. Volunteer circulators shall circulate the DS-DE 155A form, as provided to the sponsoring political committee or downloaded and printed from the Division of Elections’ website.

(7)(8) Submission of Signed Petition Forms. All signed petition forms shall be returned to the sponsoring political committee. Only the sponsoring political committee shall submit the signed petition forms to the Supervisors of Elections for verification of signatures in accordance with Rule 1S-2.0091, F.A.C.

(8) Pursuant to section 100.371(9), Florida Statutes, sponsoring political committees shall account for all petition forms used by their agents, and report such accounting to the Division of Elections at DivElections@DOS.MyFlorida.com monthly.

(9) Effect on Previously Approved Petition Forms.

(a) For volunteer petition circulators, Any petition form approved by the Secretary of State prior to the effective date of this rule may continue to be used and circulated for signature gathering unless a material change, as defined above in subsection (3), to the previously approved petition form has been approved by the Secretary of State or until the sponsoring political committee notifies the Secretary of State that the committee is no longer

seeking to obtain ballot position, or the registration of the sponsoring political committee has been revoked in accordance with Rule 1S-2.021, F.A.C.

(b) For forms circulated by paid petition circulators, a signature gathered on or after 30 days after the effective date of this rule may only be verified by a Supervisor of Elections in accordance with Rule 1S-2.009 if the signature is on Form DS-DE 155B and the paid petition circulator is registered with the Division of Elections.

Rulemaking Authority 20.10(3), 97.012(1), 100.371(2), (7), 101.161(2) FS. Law Implemented Art. XI, Fla. Const., 100.371, 101.161 FS. History—New 7-2-79, Formerly 1C-7.09, Amended 7-7-86, Formerly 1C-7.009, Amended 3-5-96, 7-31-02, 3-16-06, 10-15-07, 10-13-08, 5-21-14,_____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Maria Matthews, Director, Division of Elections

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Laurel M. Lee, Secretary of State

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 03, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: July 9, 2019