

Notice of Proposed Rule

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1S-2.0091: Constitutional Amendment Initiative Petition; Submission Deadline; Signature Verification

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-2.0091 Constitutional Amendment Initiative Petition; Submission Deadline; Signature Verification.

(1) Application and Forms. The process in this rule applies solely to constitutional amendments proposed by initiative. The form referenced herein is incorporated by reference and is available online on the Division of Elections' website at <https://www.dos.myflorida.com/elections> under 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) Submission.

(a) Signed initiative petition forms proposing amendments to the Florida Constitution shall be submitted by the sponsoring political committee to the Supervisor of Elections for the county of residence listed by the person signing the form. If a form submitted by a paid petition circulator is not timely submitted within 30 days after the elector signs the form, the sponsor is liable for the fines set forth in section 100.371(7)(a)1. and 2., Florida Statutes. If the 30th day falls on a weekend, holiday, or other day on which the Supervisor of Elections office is closed, the petition form must be delivered to the Supervisor of Elections by the following business day. Supervisors shall submit copies of untimely petitions filed by paid petition circulators to the Division of Elections for notification to sponsors and imposition of statutory fines.

(b) If the Supervisor of Elections determines that the signer of the petition is a registered voter in another county, the Supervisor of Elections shall notify the petition sponsor that the petition has been misfiled. It is the responsibility of the sponsoring political committee thereafter to ensure that the misfiled petition form is properly filed with the Supervisor of Elections for the county in which the signee is a registered voter. In the case of a misfiled petition, the filing date of the petition is the date such petition is filed with the proper county.

~~(3)~~(2) Signature Verification.

(a) In accordance with the signature verification fee provisions in section 99.097(4), F.S., which require the sponsoring committee to pay in advance the signature verification fee unless an affidavit of undue burden has been filed, the Supervisor of Elections for the county in which the signee is a registered voter shall verify the signatures on each initiative petition form within 30 days after receipt of the form to ensure that each person signing the petition form:

1. Was, at the time of signing and verification of the petition, a registered voter in the state,
2. ~~Except as provided in paragraph (4)(b), below, h~~Had not signed the petition form more than two years prior to the date the Supervisor verified the petition, and
3. Had not ever previously signed a petition form containing the identical initiative which had been verified as valid.

(b) The Supervisor shall not verify as valid a signature on an initiative petition form unless the petition is on the proper form prescribed by the Division of Elections as specified in Rule 1S-2.009, F.A.C. and all of the following information is contained on the petition form:

1. The voter's name,
2. The voter's address (including city and county),
3. The voter's accurate date of birth or voter registration number,
4. The voter's original signature, and
5. The date the voter signed the petition, as recorded by the voter.

~~(4)(3)~~ Random Sampling Not Permitted. Supervisors of Elections may not use random sampling as a method for verifying signatures on constitutional amendment initiative petitions.

~~(5)(4)(a)~~ Recordation of Verification.

(a) After completing the signature verification process, Supervisors of Elections shall report to the Division of Elections the following information:

1. The assigned serial number for the applicable initiative petition;
2. The date the form was received;
3. The date the signature was verified;
4. The number of valid verified signatures, by congressional district in the county;
5. The number of invalid signatures; and
6. For forms gathered by a paid petition circulator, the circulator's registration number.

(b) This information shall be submitted no later than weekly to the Division via data entry on the Supervisor of Elections application portal.

~~The appropriate supervisor of elections for each respective voter whose signature is verified as valid shall record the date the form was received, the date of the signature, the date the signature was verified, and the assigned~~

~~serial number for the applicable initiative petition. Upon completion of the verifications as set forth in subsection (2), the Supervisors of Elections shall submit to the Division of Elections a certificate indicating the total number of signatures verified as valid and the distribution by congressional district. In conjunction with each certificate submitted, each Supervisor shall submit a copy of one petition showing the text of the constitutional amendment to which the verified signatures relate. Certificates may be submitted by the Supervisor via facsimile in order to meet the filing deadline, followed by the original certificates sent by mail.~~

~~(b) Notwithstanding the provisions of subparagraph (2)(a)2., above, a signature on a petition by a registered voter who signed the petition on or before May 19, 2011, is valid for four years. The Supervisor of Elections shall separately certify to the Division of Elections any signatures on a petition that were signed on or before May 19, 2011 by clearly annotating that the certification represents signatures on or before May 19, 2011.~~

(6) Complaints. Any person claiming to have had his or her signature on an initiative petition form misrepresented, forged, or not delivered to a Supervisor of Elections shall use Form DS-DE 153 (eff. XX/XXXX), entitled "Form for Complaint Against Petition Circulator" to file the complaint with the Division.

(7)(5) Filing Deadline. In order for the initiative petition to be timely filed for appearance on the ballot for the next general election, the constitutionally requisite number of verified signatures must be verified and reported to the Division no later than 5:00 p.m. on February 1 of the year in which the general election is held.

(8)(6) Limitation on Use of Verified Signatures. Verified signatures used successfully to place a proposed amendment by initiative on the ballot that subsequently fails to be approved by the electors at the general election shall not be used again in support of any future initiative petition. An identical initiative petition means an initiative petition that is circulated on an initiative petition form which contains the same serial number assigned to it pursuant to Rule 1S-2.009, F.A.C.

(9)(7) Nothing in this rule prohibits a voter from signing a successive initiative petition form containing the text of a former petition if the successive petition form has a different serial number assigned to it pursuant to Rule 1S-2.009, F.A.C.

Rulemaking Authority 20.10(3), 97.012(1), 100.371(6) FS. Law Implemented Art. XI, Fla. Const., 100.371 FS. History--New 1-6-80, Amended 12-20-83, Formerly 1C-7.091, 1C-7.0091, Amended 2-13-90, 3-5-96, 1-5-04, 3-16-06, 10-15-07, 10-13-08, 7-18-10, 9-7-11, _____.

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