

## Notice of Development of Rulemaking

### **DEPARTMENT OF STATE**

#### **Division of Elections**

RULE NO.: RULE TITLE:

1S-2.037: Provisional Ballots

**PURPOSE AND EFFECT:** The revisions are proposed to address requirements in CS/SB 7066 (effective 7/1/2019) that create a right to cure a signature deficiency in the voter certificate and the sunset of the pure touchscreen voting system. Section 8 creates a right to cure a missing or mismatched signature on a provisional ballot. Additional changes to the proposed rule reflect that certain voting systems and procedures are no longer in use (e.g., Sequoia Voting Systems are no longer used in the State; as of January 1, 2020, pure touchscreens are no longer permitted in the state). Therefore, a more universal provisional ballot certificate template is proposed. A section on secrecy of provisional ballot information is also added.

**SUBJECT AREA TO BE ADDRESSED:** This rule sets out the statutory requirements for the instructions to the provisional ballot voter and lays out the format of the provisional ballot certificate and procedures for the voter, the election board, the supervisor of elections' office and the canvassing board to follow.

**RULEMAKING AUTHORITY:** 20.10(3), 97.012(1), 101.048 FS

**LAW IMPLEMENTED:** 97.053(6), 101.048 FS.

**IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.**

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 DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS:** Colleen O'Brien, Assistant General Counsel, at Colleen.O'Brien@dos.myflorida.com or (850) 245-6519

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:**

1S-2.037 Provisional Ballots.

(1) Notice of Rights. A written notice, entitled "Notice of Rights for Provisional Ballot Voters" must be provided to each person who casts a provisional ballot. The notice must include the following:

(a) Contact information for the Supervisor of Elections including phone number, facsimile number, e-mail address, mailing address and office address.

(b) The following statements:

1. "If this is a primary election, you should contact the supervisor of elections' office immediately to confirm that you are registered and can vote in the general election."<sup>2</sup>

2. "You have the right to provide written evidence supporting your eligibility to vote to the Supervisor of Elections no later than 5:00 p.m. of the second day following the election."<sup>2</sup>

3. "~~Attention:~~ If you voted a this provisional ballot because ~~we could not verify~~ your Florida driver's license card number, Florida state identification card number or the last four digits of your social security card number could not or has not yet been

verified, bring your card in person or provide a copy via mail, fax or e-mail to the Supervisor by the deadline.

4. If you voted this ballot solely because you did not have the proper photo and signature identification, you do not have to provide any further evidence, provided you are otherwise registered and entitled to vote in the precinct in where you cast your ballot, and the signature on your ballot certificate and affirmation or the provisional ballot cure affidavit matches the signature on your voter registration record or precinct register. Your ballot will be counted if your signature on the ballot Certificate matches the signature on your registration record and if you voted in the proper precinct.”

5.4. You have the right to cure a signature deficiency if your signature on the certificate is missing or does not match the one on the voter’s registration record or the precinct register. The form for the signature cure affidavit is available online on your county Supervisor of Elections’ website and the Division of Elections’ website at: <https://dos.myflorida.com>

6. “You have the right to find out no later than 30 days following the election if your ballot was counted, and if not, the reason why. [Insert instructions on how voter can access that information].”

(2) Canvass and count of ballot. The supervisors of elections and canvassing board shall canvass and count the provisional ballot in accordance with section 101.048.

(3) Free access system. In accordance with section 101.048(7), and the Help America Vote Act, 52 U.S.C. section 21082, the Supervisor of Elections must establish and maintain reasonable procedures to protect the security, confidentiality and integrity of personal information collected, stored and otherwise used to access provisional ballot information and to ensure that access to the individual provisional ballot is restricted to the individual who cast the ballot.

(4) ~~Form~~Forms for certificates and affirmations. The provisional ballot certificate and affirmation shall be substantially in accordance with Form DS DE 209 (eff. \_\_\_ / \_\_\_)([insert rule form reference link]), entitled “Template for Provisional Ballot Voter’s Certificate and Affirmation.” This form is hereby incorporated by reference and available by searching the rule online at the Florida Administrative Code’s website at: <https://www.flrules.org>. The form is available as follows:

- (a) Online at the Division of Elections’ website at: <https://www.dos.myflorida.com/elections/forms-publications/forms/>, or
- (b) By request to the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, or by contacting the Division at (850)245-6200.

Except as provided in subsection (3), provisional ballot certificates and affirmations shall be substantially in accordance with Form DS DE 49 OS (eff. 01/06), entitled “Optical Scan, Provisional Ballot Voter’s Certificate and Affirmation”; Form DS DE 49 OS/TS (eff. 01/06), entitled “Touch Screen, Provisional Ballot Voter’s Certificate and Affirmation”; or Form DS DE 49 OT (eff. 01/06), entitled “Optical Scan/Touchscreen, Provisional Ballot Voter’s Certificate and Affirmation”. All forms under this rule are

~~hereby incorporated by reference. Copies of the forms may be obtained from the Division of Elections, Room 316, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399 0250, from the Division of Elections website at: <http://election.dos.state.fl.us>, or by contacting the Division of Elections at (850)245 6200.~~

~~(3) Exception for Sequoia Touch Screen Voting System. In order to ensure the secrecy of the ballot of each provisional ballot voter, the following forms and procedures must be used and followed in all counties using the Sequoia Touch Screen Voting System:~~

~~(a) Forms. Form DS DE 50 Sequoia, entitled “Sequoia Touch Screen, Provisional Ballot Voter’s Certificate and Affirmation,” (eff. 06/06) shall be used as the provisional ballot envelope form, and form DS DE 50 Sequoia A, entitled “Provisional Ballot Identification Number Form,” (eff. 06/06) shall be used to write the provisional ballot voter’s identification number, in reference to the procedures in paragraphs (b) and (c).~~

~~(b) Procedures at the polls:~~

~~1. Once a determination is made that a voter needs to vote a provisional ballot, the voter is provided with the provisional ballot envelope form DS DE 50 Sequoia.~~

~~2. The voter fills out the Provisional Ballot Voter’s Certificate and Affirmation using DS DE 50 Sequoia and provides it to the election official to witness.~~

~~3. The election official witnesses the voter’s signature and fills out the information on the back side of the envelope indicating the reason the voter is voting a provisional ballot.~~

~~4. The election official activates the ballot and writes the provisional ballot number from the screen on a separate form using DS DE 50 Sequoia A.~~

~~5. The voter verifies that the provisional ballot identification number on the form matches the ballot number from the screen.~~

~~6. The voter places the form with the ballot identification number in the Provisional Ballot envelope and seals the envelope.~~

~~7. The voter proceeds to the touch screen voting system and votes his or her provisional ballot.~~

~~8. At the close of the polls, all completed provisional ballot envelopes are returned to the supervisor of elections.~~

~~(c) Procedures during the canvassing process:~~

~~1. The canvassing board determines the eligibility of each provisional voter.~~

~~2. For each provisional voter that is determined to be eligible, the provisional ballot envelope shall be opened and the provisional ballot number shall be separated from the envelope containing the voter’s name to ensure that the voter’s name and provisional ballot number cannot be connected.~~

~~3. All ballots connected to the provisional ballot numbers for eligible voters shall be tabulated according to the procedures for tabulating ballots provided by the manufacturer.~~

~~4. For each provisional voter that is determined to be ineligible, the provisional ballot envelope shall not be opened and the Provisional Ballot Identification Number shall remain sealed in the envelope.~~

~~(d) All requirements of this rule otherwise apply to provisional ballots cast using the Sequoia Touch Screen Voting System.~~

*Rulemaking Authority 20.10(3), 97.012(1), (2), 101.048 FS. Law Implemented 97.053(6), 101.043, 101.048, 101.049, 101.111 FS. History—New 2-2-04, Amended 1-29-06, 6-1-06, 11-18-07, 5-19-10, \_\_\_\_\_.*