



Florida Department of State

UPDATE - 2015 ELECTION LAWS, RULES, & OPINIONS

Presented by Gary Holland
Assistant Director, Division of Elections
Telephone: 850-245-6200
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**New Election
Laws from 2015
Legislative
Session**

**Section 103.101(1) –
Presidential Preference Primary
Ch. 2015-5, Laws of Fla. (eff. 3/19/15)**

- PPP moved to third Tuesday in March of presidential election year.
- In 2016, date will be March 15th.

**Section 101.6952(2) –
Federal Write-in Absentee Ballot
Ch. 2015-40, Laws of Fla. (eff. 7/1/15)**

FWAB may now be used in any federal, state, or local election (to include ballot measures and judicial merit retention races)

NOTE: Judicial merit retention races are like ballot measures; only allowable responses are “yes” or “no.”

**Section 101.6952(3) –
Federal Write-in Absentee Ballot
Ch. 2015-40, Laws of Fla. (eff. 7/1/15)**

- A FWAB from an overseas voter in PPP or general election may not be canvassed until the end of the 10-day absentee ballot extension for such voters.
- If the voter's regular ballot is received during the 10-day window, then the FWAB is invalid and the regular ballot is to be canvassed.

(Codifies DE 14-05)

**Section 101.66(4) –
Manual Recount re: FWAB
Ch. 2015-40, Laws of Fla. (eff. 7/1/15)**

Requires DOS to adopt rules for determining the voter's choice for ballot measures listed on a FWAB, to include

- the proximity of entries, and
- the use of marks, symbols, or language to indicate the voter's approval or disapproval of the ballot measure.

Section 97.0525

Online Voter Registration Application

Ch. 2015-36, Laws of Fla. (eff. 7/1/15)

- **Legislative Report** (to be submitted by DOE)
 - Due NLT January 1, 2016, regarding progress on implementation
- **Risk Assessment** (to be done by DOE)
 - Conduct before implementation and every 2 years thereafter
- **Major system components**
 - Secure website/system
 - Online application (new and updates) for use by persons with driver licenses or state identification number
 - DL/State ID verification
 - Electronic confirmation when SOE receives online application
 - Accessibility compliant
- **Implementation** – October 1, 2017

Section 119.071(5)(k)

Public Records Exemption

Ch. 2015-86, Laws of Fla. (eff. 6/2/2015)

- Creates exemption from public records for current or former servicemember, his/her spouse, and dependent *if servicemember served after 9/11/2001*.
- Servicemember includes one serving in active armed forces, a reserve component, or National Guard.
- Protected information: home address, phone number, birthdate, place of employment of spouse or dependent, phone number associated with spouse/dependent's personal communication device, name and location of school attended by spouse or school or daycare facility attended by dependent.
- Servicemember must submit written request to agency & state that reasonable efforts made to protect information.

Section 119.071(4)(d)2.n.

Public Records Exemption

Ch. 2015-37, Laws of Fla. (eff. 5/21/15)

- Creates exemption from public records for current or former Impaired Practitioner Consultant (IPC) retained by an agency or employee of an IPC whose duties result in a determination of a person's skill and safety to practice a licensed profession.
- Also covers identifying information of spouse and children of an IPC, to include their names, places of employment & names/locations of school and day care facilities of children . (**Note:** The name of the IPC not protected; only home address, phone numbers, birthdates and photos.)
- Written request necessary to be filed to have the protection and IPC must have made reasonable efforts to protect information from otherwise being accessible.

Sections 119.0712(2) & 197.3225

Public Records Exemptions

Ch. 2015-13 & 2015-32, Laws of Fla. (eff. 7/1/2015)

- Create exemptions from public records for:
 - Email addresses held by a Tax Collector for tax notice purposes;
 - Email addresses collected by DHSMV for drivers' license purposes.
- DHSMV interpretation as it affects voter registrations done at DHSMV and Tax Collector offices:
 - No changes regarding the collection of email addresses for voter registration purposes (e.g., for sample ballot purposes) as they are still public record and applicants will be advised of this at DHSMV and Tax Collector offices.

Overview of Rulemaking Process

General Rulemaking Timelines: Law

1-2 days for notice to be published in the Florida Administrative Register (FAR). (Submit by 3pm, will be published the following day in FAR.)

- **Notice of Rule Development:** 14-day advance published notice before workshop (1 or more workshops can be held)
- **Notice of Proposed Rule:** 21-day advance published notice (w/ proposed text) before public hearing. (90-day clock to adopt rule starts from published notice.)
- **Notice of Change:** 21-day advance published notice before rule adoption (required if substantive changes made after Notice of Proposed Rule)

General Rulemaking Timelines: Law

- **Filing for Adoption:** 7-day advance review by Legislature's Joint Administrative Procedures Committee (JAPC) to give its OK before rule adoption (Purpose to ensure: adequate statutory basis, all applicable procedures are followed, and not illegal)
- **Effective Date:**
 - Default: 20 days from date filed for adoption
 - Later specified date (*i.e.*, 20 days plus)
 - Upon legislative ratification (for those rules that trigger economic impact thresholds)

General Rulemaking Timelines: Additional Requirements

- **DOS Internal review:** All notices must be reviewed and approved by chain of command - Division Director, General Counsel, Deputy Secretary, Assistant Secretary and Secretary
- **OFARR:** At a minimum, notices of Rule Development, Proposed Rule and Notice of Change must be submitted to Governor's **Office of Fiscal Accountability & Regulatory Reform** one week in advance of FAR submission (includes economic impact analysis which also determines whether rule will require legislative ratification to become effective)

RULES --

What's Ahead?

“Priority” Rules Undergoing Revision in 2015

- **Rule 1S-2.015** (Minimum Security Procedures)
- **Rule 1S-2.031** (Recount)
- **Rule 1S-2.032** (Uniform Ballot)
- **Rule 1S-2.043** (Electronic File Reporting of AB, EV, Election Results, Voting History) – to be split and new **Rule 1S-2.053** created
- **Rule 1S-2.045** (Candidate Petition Rule)
- **Rule 1S-2.051** (FWAB - Determination of Voter Choice)
- **Rule 1S-5.001** (Voting Systems Standards)

Rule 1S-2.015 Minimum Security Procedures for Voting Systems

- **FS 101.015:** Contains 4 specific mandates for the DOS to adopt rules in the areas of minimum security standards for hardware, software, and voting systems, as well as to achieve and maintain maximum degree of correctness and efficiency of voting procedures.

- **Rule Development Workshop, June 15th @1pm**

Rule 1S-2.015: Why update?

1. Define additional terms used in the rule.
2. Ensure that DOE has latest version of county's security procedures on file.
3. Adapt rule to current procedures for odd-year review of counties' minimum security procedures and to clarify timelines for the review process.
4. Provide more detailed contents for security procedures to enhance security of the voting system and all ballots (absentee, provisional, early voting, and Election Day).

Rule 1S-2.031 Recount Procedures

- FS 102.141(7)(d) and 102.166(5)(d) require DOS to adopt detailed rules prescribing additional recount procedures other than those specified in statute.
- 2nd Workshop scheduled for June 15, 2015 – first workshop held on April 9, 2014.

Rule 1S-2.031: Why update?

1. Conform to state law as to who orders a recount when it is a state versus a local contest.
2. Add definitions for terms used in the rule.
3. Codify current practice and law in that recount procedures apply to municipal elections when county voting system used.
4. Emphasize ballot security.
5. Clarify when recounts can begin.
6. Require advance notice of names of candidate/political party/political committee representatives at recount.
7. Provide procedures when recount exists in race where votes may be given to more than one candidate.
8. Remove reference to outdated voting systems and add names of applicable voting systems.

Rule 1S-2.032 Uniform Primary & General Election Ballot

- **FS 101.151** requires DOS to adopt rules prescribing a uniform primary and general election ballot for each certified voting system, to include graphic depiction of ballots.
- **Rule Development Workshop, June 15th @1pm**

Rule 1S-2.032: Why update?

1. Substantial rewrite to update, reorganize and clarify the rule's content and ballot samples.
2. Conform to statutory changes (elimination of contest headings).
3. Define additional terms used in the rule.
4. Add more specificity regarding ballot layout.
5. Provide more flexibility for possible future certifications of voting systems (e.g., hybrid systems).
6. Clarify reasons for SOE to request deviation from the rule.

Rule 1S-2.043 Electronic File Reporting - Absentee Ballot Request Information, Voting Activity, and Election Results

- **FS 98.0981(5)** requires DOS to adopt rules and prescribe forms to carry out purpose of statute prescribing the electronic format for precinct-level elections results, voter history, and reconciliation of ballots cast with voter history.
- **FS 102.141(4) and (10)** require DOS to adopt rules that establish required content and formats for election results.
- **FS 101.62(3) and 101.657(2)** require DOS to prescribe the electronic format for AB & EV upload.

Rule 1S-2.043 Electronic File Reporting - Absentee Ballot Request Information, Voting Activity, and Election Results

- Rule hearing -9/15/2014; withdrawn -2/23/15.
- Rulemaking resumed with new workshop notice on 5/15/15 -- **workshop held on 6/1/15.**
- Splits existing rule into 2 to cover reports for
 - Pre-election day activities (R1S-2.043)
 - Election and post-election activities (R1S-2.053)
- **Pending Notice of Proposed Rule**

Rule 1S-2.043: Why update?

1. Narrow scope of rule to pre-election day reporting activities, i.e., absentee and early voting.
2. Respond to statutory changes regarding absentee ballot and early voting requirements.
3. Better define the codes for absentee ballot status reporting.
4. Eliminate the submission of EV summary file; only require EV voters list file.
5. Specify the upload deadline is the time zone of SOE office.

Rule 1S-2.053: Why Update?

1. Limit scope of rule to election and post-election day reporting activities.
2. Create uniform format for submission of election results, precinct-level election results, voter history and the reconciliation report.

Rule 1S-2.045

Candidate Petition Process

- FS 99.095 & 105.035 require the Division to prescribe the format of the candidate petition.
- Proposed Rule hearing is on June 15th @ 11:00am.

Rule 1S-2.045: Why update?

1. Clarify that petition process only waives the qualifying fee and any party assessment, but that the candidate must still submit other qualifying papers.
2. Clarify what invalidates a petition (e.g., conflicting information for political party affiliation).
3. Clarify what format changes can be made by a candidate (e.g., using strike-through markings for items not applicable to one's candidacy).

Note: Change of address box not being included since candidates need not submit petition to SOE, unlike initiative petitions which PCs are required to submit to SOE.

Rule 1S-2.051

Standards for Determining Voter's Choice on a Federal Write-in Ballot

- Expect Notice of Rule Development.
- Rule is based upon statutory mandate in s. 102.166, FS.
- Although s. 102.166 concerns the manual recount of overvotes & undervotes, s. 101.5614(5)(b), FS, provides that duplication of a FWAB is also based upon this rule.

Rule 1S-2.051: Why update?

- Due to Ch. 2015 - 40, Laws of Florida, extending use of FWAB to ballot measures and judicial merit retention races, effective July 1, 2015.
- Amendments necessary to specify when vote for ballot measure or judicial merit retention race will count or not count.

Rule 1S-5.001

Voting Systems Equipment Regulations

- **FS 101.015** requires the DOS to adopt rules which establish minimum standards for voting systems, to include provisional approval.

- Expect Notice of Rule Development

Beware: This is a “techie” rule! Draft incorporated form (Florida Voting Systems Standards) is about 140 pages long.

Rule 1S-5.001: Why update?

1. Update the standards to reflect current technology and standards in use for new voting systems and ancillary and peripheral systems/components.
2. Provide standards for approval of non-tabulation systems.
3. Make the Florida Voting Systems Standards form (DS-DE 101) more comprehensive as to the standards required.
4. Provide more explicit guidance to vendors or other applicants as to what is required and what to expect in terms of submissions, procedures, notices, testing, costs, allowable changes, certifications, approvals, denials, etc.

More Rule Revisions

Other rules on list to be revised in FY 2015-16:

- Qualifying Requirements (1S-2.0001)
- SOE Special Qualification Salary (1S-2.0115)
- Random Sampling Procedure (1S-2.008)
- Const. Amendment Initiative Petition (1S-2.0091)
- Reporting Requirements for Campaign Treasurer's reports (1S-2.017)
- Mail Ballot Election (1S-2.022)
- 3PVRO (1S-2.042)
- State Campaign Matching Funds Program (1S-2.047)

OPINIONS

Advisory Opinions

➤ **Informal Opinions**

- Election-related *procedural* questions 

Division of Elections

- Election-related *legal* questions 

DOS Office of General Counsel (i.e., questions that involve an interpretation of a statute or the application of a statute to a specific set of facts.)

➤ **Formal Advisory Opinion**

- Statutory authority: F.S..106.23(2)
- Rule 1S-2.010, Fla. Admin. Code - contains the procedures to submit a request

Election Attorneys at DOS

➤ Phone: **850-245-6536**

➤ **Jordan Jones**

(Jordan.Jones@DOS.MyFlorida.com) –

Responsible for Election Code chapters: 97, 98, 99, 103, 104, 105, 106; plus, public record issues involving those chapters.

➤ **Lydia Strom** (Lydia.Strom@DOS.MyFlorida.com) -

Responsible for Election Code chapters: 100, 101, and 102; plus, public record issues involving those chapters. Also, is the HAVA attorney.

2015 Formal Advisory Opinions

- **DE 15-01:** A candidate disposing of surplus funds pursuant to section 106.141, Florida Statutes, may do so by giving funds to the **county** executive committee of a political party

Formal Advisory Opinions

Pending opinions involve:

- Whether municipal campaign finance reporting calendar conflicts with Ch 106.
- County Canvassing Board issues: May the board vote to remove a member? Does a mistaken endorsement by a member of the board in a political advertisement printed by a candidate disqualify the member?
- Political Committee wants to award citizens for requesting an absentee ballot or for voting by absentee (not tying the award, prize, or payment to any particular candidate or party).
- Sitting office holder and potential candidate for election wanting to purchase informational refrigerator magnets and publish newsletter for education of, and use by, constituents.
- Resign-to-run question regarding municipal candidate.

**Any Comments or
Questions**



The End