

Florida Department of State



Ken Detzner
Secretary of State

Presented by Gary J. Holland and Bennett M. Miller
Office of General Counsel, Department of State
January 16, 2013

General Overview of Florida's Election Process –

Voter Registration through Election Certification

Secretary of State – Chief Election Officer of the State (s. 97.012)

Has responsibility for:

- (1) Uniformity - Interpreting and implementing election laws (ch. 97-102, and 105)
- (2) Uniformity - Standards in implementing registration laws
- (3) Technical assistance to Supervisors of Elections, *etc.* . . .
(16 enumerated duties in s. 97.012)

Pre-election

Voter Registration (s. 97.041): Eligible

Person may become a registered voter if:

- At least 18 years of age
- U.S. citizen
- Legal resident of Florida
- Legal resident of county in which person seeks to register
- Registers pursuant to Election Code

Voter Registration (s. 97.041): Ineligible

- Adjudicated mentally incapacitated who has not had right to vote restored.
- Convicted of felony who has not had right to vote restored.
- Not U.S. citizen
- Not a legal resident of state
- Not 16 or older (age 16 & 17 may pre-register)

Voter Registration (s. 97.041): Deadline

“Book closing” (s. 97.055) – if registered fewer than 29 days before the election, cannot vote in that election, but otherwise will be registered to vote in future elections.

Special late registration deadline (s. 97.0555 and Rule 1S- 2.029) – 5 days before Election Day for:

- Person discharged or separated after book closing from uniformed services or Merchant Marine
- Person left employment after book closing outside U.S.

Voter Registration Entities –

ss. 97.053, 97.057, & 97.0575

1. Division of Elections
2. Supervisor of Elections
3. Department of Highway Safety and Motor Vehicles
4. Voter registration agency (office that provides public assistance, office that serves persons with disabilities, center for independent living, or public library)
5. Third-party voter registration organization

Removal from the Registration Rolls

- Voter's written request (s. 98.045(2))
- Notice from out-of-state election official (s. 98.045(2))
- Ineligibility list maintenance activities (s. 98.075)
- Address list maintenance activities (s. 98.065)

List Maintenance Activities (s. 98.075)

- Supervisors must give due process (notice and opportunity for a hearing) to remove voters from registration rolls. Appeal possible to circuit court (s. 98.0755).

List Maintenance Activities – Removal relating to addresses (s. 98.065)

- Biennial address maintenance program
- Daily address change information processing
- 90-day pre-election moratorium on removal
- Due process for removal:
 1. Send final notice to voter
 2. Place voter in inactive status if no response to notice or undeliverable notice
 3. Wait through next 2 general election cycles
 4. Remove if no voter activity → no voting or record update

List Maintenance Activities-

Removal relating to ineligibility (s. 98.075)

- Removal based upon death, felony conviction, mental incapacity adjudication, not U.S. citizen, or otherwise ineligible to be a voter
- Ongoing year round process
- Due Process:
 - ✓ Notice and opportunity for a hearing
 - ✓ Appeal to circuit court (s. 98.0755).
 - ✓ Restore at any time even after book closing if illegally or erroneously removed

Precinct Boundaries (s. 101.001)

- Board of County Commissioner creates or alters precincts subject to Supervisor's recommendation and approval
- Precinct boundaries based on U.S. Census blocks, except in certain circumstances.
- Supervisor designates a suitable polling place in each precinct.
- Supervisor must provide new voter information card every time polling place changes (not solely for precinct changes) (s. 97.071).

Notice of General Election (s. 100.021)

The Department of State must publish notice of state, county, and district offices to be filled at general election

- Twice in newspaper of general circulation
- In each county
- 30 days before qualifying

Constitutional Amendments/Revisions by Joint Resolution (JR) (s. 101.161)

- JR ballot statement may be a summary or full text* on ballot
- JR may include optional ballot summaries in case of court finding any defect
- JR legal challenges limited to 30-day window (clocks starts after JR filed with Sec of State)

*By December 31, 2013, all voting systems (optical scan and ADA accessible) must handle ballots with full mark up text of amendment/revision(s. 101.56075(4))

Constitutional Amendments by Joint Resolution (JR) (101.161) cont'd.

- If all ballot summaries found invalid, AG shall, w/in 10 days, prepare new ballot summary for Sec of State to provide to SOEs
- Statutory presumption exists that full text is clear and unambiguous and constitutes fair notice to voters

Ballot Specifications (s. 101.151)

- Law and rule decide the order of offices, candidates, and political parties on ballot (R1S-2.032).
- *E.g.*, Names of candidates of the party that received the highest number of votes for Governor in the last election for Governor are placed first on the general election ballot.

Election

Absentee Ballots (s. 101.62)

- “No-excuse” absentee voting: No reason needed to vote absentee
- Request must be from voter, member of immediate family, or legal guardian
- Method of request (phone, email, fax, in person, mail, online)
- Required information: voter’s name, voter’s date of birth, voter’s address, and if requester is other than voter: requester’s DL #, requester’s relationship, and requester’s signature

Absentee Ballots

- **Regular absentee** (s. 101.62)
 - ✓ In person pick-up
 - ✓ Mail
 - ✓ Email or fax (UOCAVA voters only – *i.e.*, “Uniformed and Overseas Citizens Absentee Voting Act” - military absent stateside and overseas, and overseas civilians)
- **Federal write-in absentee** (s. 101.6952)
 - ✓ For UOCAVA voters only
 - ✓ Available online (e.g., from Federal Voting Assistance Program)
 - ✓ Emergency backup only if regular ballot requested, but not yet arrived
- **State write-in absentee** (s. 101.6951/R1S-2.028)
 - ✓ Available only for voters whose absentee ballot will not be deliverable due to military or other contingency.
 - ✓ 90-180 request period before Election Day.

Absentee Ballots (s. 101.62)

Mailing deadline for standing requests:

- **For UOCAVA voters** (“Uniformed and Overseas Citizens Absentee Voting Act” -- military absent stateside and overseas, and overseas civilians)
 - 45 days before election
- **For all other domestic voters**
 - 7-day window (35-28 days before election)

Absentee Ballots (s. 101.62)

Deadline:

- To request absentee ballot to be mailed: 6 days before Election Day.
- To request absentee ballot to be emailed or faxed (ONLY for UOCAVA voters): Election Day
- To pick-up absentee ballot in person: Election Day
- To return absentee ballot: Must be received by 7 p.m. on Election Day in SOE office

Absentee Ballots (ss. 101.65 & 101.6923)

Ballot instructions (notice) to absentee voter:

- If signature on voter certificate and registration do not match, ballot will not count
- Deadline to update signature in registration record for absentee ballot:
 - Before board starts to canvass absentee ballots which may start as early as 7 a.m., 15 days before election (depending on county)
- Must use registration application to update signature (s. 98.077)

Logic & Accuracy Testing

(s. 101.5612) - Testing of Tabulating Equipment

- Public test of tabulating equipment to ensure
 - Votes counted correctly
 - System properly programmed
 - Election correctly defined
 - Input, output and communication devices working properly
- No later than 10 days before early voting
- 48-hour notice & notice to candidate/party/committee
- Uses actual ballots printed for the election.

Early Voting (s. 101.657)

- Early Voting period
 - Provides for 8-day early voting period
 - Begins 10 days before election
 - Ends 3 days before election

Early Voting (s. 101.657) – cont'd

- Hours:
 - Requires minimum 6 hours of early voting per day per site
 - Allows for maximum hours - 96 hours per early voting period
 - Gives Supervisors flexibility to choose hours for each early voting site

Early Voting (s. 101.657) -- cont'd

Locations:

- Supervisor of Elections' main office or branch office (if branch has been used as such for at least 1 year)
- City hall
- Permanent public library facility

Identification at Polls (s. 101.043)

Photo ID (current and valid) with signature required at polls – any 1 of 9:

- FL Drivers license
- FL ID card issued by DHSMV
- US passport
- Debit or credit card
- Military ID
- Student ID
- Retirement Center ID
- Neighborhood association ID
- Public Assistance ID

Address Change at Polls (s. 101.045)

- Must vote in the precinct assigned to legal residence
- In-county address change:
 - Allowed at polls
 - Vote regular ballot
- County-to-county address change:
 - Not allowed at polls
 - Must vote a provisional ballot
 - Exception: active uniformed services voter or a member of his/her family) → regular ballot

Provisional Ballots (s. 101.48)

- For voters whose eligibility is indeterminate or challenged
- For any reason a regular ballot cannot be voted
- Deadline to present evidence in support of eligibility:
 - ✓ 5 p.m. on 2nd day following election
- Provisional ballot must be counted unless the canvassing board determines by preponderance of evidence that the person was not entitled to vote

Poll Opening & Closing (s. 100.011(1))

- Polls shall open at 7 a.m. and close at 7 p.m. on Election Day
- If voter is in line at time of poll closing during early voting or on election day, the voter shall be allowed to vote

Post-Election

Election Results - Reporting stages

- Preliminary (unofficial election night) results
 - what the media uses “to call” an election
- 1st unofficial returns
- 2nd unofficial returns (if machine recount required)
- Official results
- Certification

Election Night Preliminary 'unofficial' Results (s. 102.141)

- Canvassing board to report to DOS:
 - Within 30 minutes of polls closing all early voting results and all tabulated absentee ballot results
 - Every 45 minutes thereafter updated precinct results (except for provisional ballots) until completed (Supervisor to notify DOS if circumstances do not permit periodic updates)

First Unofficial Returns for General Election (s. 102.141(5) & (7))

- **Deadline:**
 - Noon, 3rd day after primary election
 - Noon, 4th day after general election
- Includes all canvassed ballots (precinct, absentee, early votes, & provisional ballots)
- **Machine recount:** If race (candidate or public measure) defeated or eliminated by $\frac{1}{2}$ of 1 percent of votes cast
- L&A test must be conducted before recount

Second Unofficial Returns for General Election (s. 102.141(7)(c))

- Only if machine recount triggered
- **Deadline:**
 - ✓ 3 p.m., 5th day after primary election day
 - ✓ 3 p.m., 9th day after general election day
- **Manual recount of over/under votes, if:**
 - ✓ If candidate or public measure defeated or eliminated by $\frac{1}{4}$ of 1 percent of votes cast &
 - ✓ # of overvotes/undervotes is more than # of votes needed to change election outcome.

Official Returns for Election

- **Deadline for county canvassing board to submit (s. 102.112):**
 - ✓ 5 pm., 7th day after primary election
 - ✓ Noon, 12th day after general election
- **Meeting times for Florida Elections Canvassing Commission to certify (s. 102.11):**

Returns solely for federal, state, and multi-county office

 - ✓ 9 a.m., on 9th day after the primary election
 - ✓ 9 a.m. on 14th day after the general election

Post-Election Audit (s. 101.591)

- Manual audit of voting system
- Done immediately following certification of election
- One race randomly selected
- Publicly noticed
- Completed by 11:59 p.m. on 7th day following certification
- Results reported to DOS
- If manual recount was done, a post-election audit is not required

Conclusion

- **The Election Code** = Chapters 97-106, Florida Statutes
- All matters set forth in chapters 97-105 are **preempted to the state**, except as otherwise specifically authorized by state or federal law.
- **Municipal elections** governed by s. 100.3605 – Election Code applies in absence of special act, charter, or ordinance provision not in direct conflict with an Election Code provision that expressly applies to municipalities.

Areas of Responsibility & Contact Information

- Areas of Responsibility for Legal Issues/Interpretations:

Bennett: HAVA, FVRS, NVRA; chapters 97, 98, 100, 101, 102, 104, and 105 (i.e., Voter registration, voting systems, & voting procedures)

Gary: Chapters 99, 100, 102, 103, 104, 105, and 106 (i.e., Candidate, resign-to-run, and campaign finance, political organizations, & advertising)

- **Phone:** 850-245-6536; **Email:**
Bennett.Miller@dos.myflorida.com
Gary.Holland@dos.myflorida.com