

Notice of Proposed Rule

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1S-2.042: Third-Party Voter Registration Organizations

PURPOSE AND EFFECT: This proposed rule implements the requirements of Ch 2011-40, s. 4, Laws of Florida, regarding the registration and accounting procedures for voter registration applications collected by third-party voter registration organizations.

SUMMARY: The proposed rule requires registration electronically, adopts forms for use by third-party voter registration organizations and supervisors of elections to account for an organization's voter registration applications, and removes obsolete language from the present rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: 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. An SERC has not been prepared by the agency.

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(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS

LAW IMPLEMENTED: 97.012(1), (2), (15), (37), 97.053, 97.0575 FS

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: August 8, 2011; 9:00AM

PLACE: Room 307, R.A. Gray Building, Department of State, 500 S. Bronough Street, Tallahassee, Florida

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 5 days before the workshop/meeting by contacting: Eddie Phillips, Executive Assistant, Office of General Counsel, Department of State, telephone: (850)245-6536; email: elphillips@dos.state.fl.us. 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: Gary J. Holland, Assistant General Counsel, Department of State, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida 32399-0250; telephone: (850)245-6536; email: gjholland@dos.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

1S-2.042 Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division's webpage at: <http://election.dos.state.fl.us/forms/index.shtml>:

(a) Form DS-DE 119 (eff. 06/2011 ~~05/2010~~), entitled "Third-Party Voter Registration Organization Registration Form."

(b) Form DS-DE 120 (eff. ~~06/2011~~ 05/2010), entitled “~~Quarterly Report Form for Organized Voter Registration Drives by~~ Third-Party Voter Registration Organization Registration Agent’s Sworn Statement.”

(c) Form DS-DE 121 (eff. ~~06/2011~~ 05/2010), entitled “Form for Complaint Against Third-Party Voter Registration Organization.”

(d) Form DS-DE 123 (eff. 06/2011), entitled “Third-Party Voter Registration Organization’s Accounting of Voter Registration Applications.”

(e) Form DS-DE 124 (eff. 06/2011), entitled “Supervisor of Elections’ Accounting of Third-Party Voter Registration Organization’s Voter Registration Applications.”

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) “Affiliate organization” of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) “Engaging in any voter registration activities” means that the organization is soliciting for collection or collecting voter registration applications from Florida voter registration applicants.

(c) “Force majeure” means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

~~(d)(e)~~ “Impossibility of performance” means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

~~(e)(d)~~ “Registration agent” means any individual who is employed by or volunteers for a third-party voter registration organization and who solicits for collection or who collects voter registration applications from Florida voter registration applicants on behalf of the organization. “~~Organized voter registration drive~~” means any voter registration activity that is coordinated with, or directed by, a third party voter registration organization and where

~~one or more persons solicit or collect voter registration applications on behalf of the third party voter registration organization.~~

(3) Registration.

(a) Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter “organization”) shall complete and file Form DS-DE 119 with the Division. The organization must submit the form as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmit the form to the Division’s facsimile machine at 850-245-6291 prior to conducting any voter registration activities. An affiliate organization which solicits for collection or collects voter registration applications from Florida voter registration applicants must file a Form DS-DE 119 even if its affiliated organization has filed a Form DS-DE 119. An ~~third-party voter registration~~ organization shall also use Form DS-DE 119 to update or ~~terminate~~ ~~withdraw~~ its registration.

(b) Upon receipt of an organization’s initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with “3P.” An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

(c) A registration agent must complete, sign, and date Form DS-DE 120 before beginning his or her duties for the organization and the organization must ensure the form is submitted to the Division within 10 days after the form is signed. Form DS-DE 120 may be submitted to the Division when the organization submits its initial DS-DE 119. For any addition to the list of its registration agents or change in information about a registration agent other than termination of a registration agent, the organization shall submit an updated Form DS-DE 119. For permissible means of notifying the Division of the termination of a registration agent, *see* subsection (6)(b).

(d) A registration agent may be a registration agent for one or more organizations, but each organization must ensure that the registration agent submits a separate Form DS-DE 120 for its organization.

(e) An organization shall submit any change in information previously submitted to the Division within 10 days following the change. A change is not considered filed until the Division receives the change.

(f) Except as otherwise provided in subsection (6)(b), any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the Form DS-DE 119 used to initially register an organization.

(4) Voter Registration Applications Provided to and Used by Third-Party Voter Registration Organizations Drive Quarterly Report.

(a) All voter registration applications provided by the Division and each supervisor of elections to an organization shall include the third-party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

(b) The registration agent or the organization shall print the date and time that the voter registration applicant completed the application in a conspicuous space on the bottom portion of the reverse side of the voter registration application it collects from a voter registration applicant in a manner that does not obscure any other entry. The date and time printed by the registration agent or the organization shall be in the following numerical format: MM/DD/YY; hh:mm am/pm. For example, if the voter registration applicant completed the application on May 15, 2014 at 1:30 p.m., the entry on the bottom portion of the reverse side of the application shall be: 5/15/14; 1:30pm. The entry for an application completed on October 11, 2014 at 11:30 a.m., would be printed as 10/11/14; 11:30am on the bottom portion of the reverse side of the application.

(c) Each organization shall ensure that its assigned organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(5) Monthly Report by Organizations.

(a) By the 10th day of each month, each organization shall submit to the Division a Form DS-DE 123 to account for the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month. If the organization had no voter registration activity in the preceding month, the organization shall still submit Form DS-DE 123 reflecting that it did not provide voter registration applications to, or receive any from, its registration agents.

(b) Form DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at 850-245-6291.

(6) Termination of Organization and Registration Agent.

(a) If an organization terminates its status as a third-party voter registration organization, the organization shall submit within 10 days a Form DS-DE 119 reflecting its termination and also a Form DS-DE 123 to report its final accounting of voter registration application forms provided to the organization by the Division or any supervisor of

elections. All such voter registration applications remaining in the organization's possession should be returned either to the Division or a supervisor of elections within 10 days of filing Form DS-DE 123. The address for the Division is Bureau of Voter Registration Services, Division of Elections, R. A. Gray Building, Room 316, Tallahassee, Florida 32399-0250. The address for the applicable supervisor of elections may be obtained by telephoning 850-245-6200 or found on the Internet at http://election.dos.state.fl.us/SOE/supervisor_elections.shtml.

(b) If a registration agent's employment with, or volunteer services for, an organization is terminated, the organization shall file notice of the terminated status of a registration agent by submitting an updated Form DS-DE 119 or by sending a notification of the termination by email to 3PVRO@dos.state.fl.us or by transmitting the notification to the Division's facsimile machine at 850-245-6291. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the registration agent being terminated.

(c) Forms DS-DE 119 and DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at 850-245-6291.

(7) Processing of Voter Registration Applications from an Organization by the Division and Supervisors of Elections.

(a) For each non-blank registration application that an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date and time of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries. For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered by the organization. Therefore, if an organization delivers more than one application at the same time, those applications shall bear the same date and time of delivery regardless of when the applications are processed.

(b) An organization's untimely delivery of a voter registration application does not affect the validity of the application. Such application must be processed regardless of the timeliness of its delivery.

(c) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on Form DS-DE 124 by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. Supervisors of Elections are not

required to submit Form DS-DE 124 when they did not provide any voter registration applications to, or receive any from, an organization on the preceding business day.

(d) Form DS-DE 124 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.state.fl.us or transmitted to the Division's facsimile machine at 850-245-6291.

~~Voter Registration Drive Quarterly Report. A third party voter registration organization shall use Form DS-DE 120 to file quarterly reports with the Division as required by Section 97.0575(1), F.S. The quarterly reports shall be filed no later than April 15, July 15, October 15, and January 15 to cover the preceding calendar quarter, respectively. If a due date falls on a Saturday, Sunday, or legal holiday, the report is due on the next day which is not a Saturday, Sunday, or legal holiday.~~

(8)(5) Complaints and Fines.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.

(b) Any other person, except supervisors of elections or their staff, may report allegations of ~~elections fraud,~~ which includes irregularities or fraud involving voter registration; by filing an elections fraud written complaint with the Division, using Form DS-DE 34, entitled "Elections Fraud Complaint," incorporated by reference in *See* Rule 1S-2.025, F.A.C.

(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.state.fl.us or by transmitting the explanatory statement and documentation to the Division's facsimile machine at 850-245-6291.

~~(6)(c) Fines. If the Division determines that a fine should be imposed on a third party voter registration organization, the Division shall serve an administrative complaint pursuant to Rule 28-106.2015, F.A.C., upon the third party voter registration organization by personal delivery or certified mail, return receipt requested. A third party voter registration organization upon which the Division serves an administrative complaint may request a hearing in accordance with Sections 120.569 and 120.57, F.S., and subsection 28-106.2015(5), F.A.C.~~

Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) (4), (8) FS. Law Implemented 97.012(1), (2), (15), (37) (36), 97.053, 97.0575 FS. History--New 2-26-09, amended, 5-31-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Gary Holland.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Gisela Salas.

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: July 05, 2011

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: June 3, 2011