

“Custodian Affidavit,” are hereby incorporated by reference. These forms may be obtained from the Office of Insurance Regulation, Larson Building, Tallahassee, Florida.

(j) A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank’s or trust company’s duties and activities as custodian for the insurer’s assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian’s banking regulator. A broker/dealer shall secure and maintain insurance protection for each insurance company’s custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company’s custodied securities.

(k) The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian’s officers or employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction.

(l) In the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in paragraph (k) above, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities.

(m) The agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control.

(n) In the event that the custodian gains entry in a clearing corporation ~~or in the Federal Reserve book-entry system~~ through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian, provided, however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the Director may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

(o) The custodian shall provide written notification to the Office if the custodial agreement with the insurer has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the Office within three (3) business days of the receipt by the custodian of the insurer’s written notice of

~~termination or within three (3) business days of the withdrawal of 100% of the account assets agreement must be terminable by the insurance company on not more than thirty (30) days’ notice.~~

(3)(a) Nothing in this rule shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (3) days of the receipt of the notice.

(b) The terms of any such agreement shall comply with the following:

1. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

2. The receiving insurance company shall allow representatives of an appropriate regulatory body to examine records relating to securities held subject to the agreement.

3. The depositing insurance company may authorize the receiving insurance company:

a. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and

b. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

Specific Authority 624.308(1), 628.511(1), (4), 628.535 FS. Law Implemented 624.307(1), 625.55, 628.511 FS. History—New

Section IV Emergency Rules

DEPARTMENT OF STATE

Division of Elections

RULE NO.:
ISER08-1

RULE TITLE:
Constitutional Amendment Initiative
Petition; Submission Deadline:
Signature Verification

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Pursuant to Section 120.54(4)(b), Florida Statutes, this emergency rule pertains to the public health, safety, and welfare as it involves the interpretation and implementation of the requirements of Chapters 97-102 and 105 of the Florida Election Code.

Prior to 2007, supervisors of elections submitted to the Secretary of State paper certificates indicating the number of signatures verified as valid for each petition initiative. Effective January 1, 2007, Section 100.371, Florida Statutes, was amended to require supervisors of elections to record each valid signature in the statewide voter registration system. Chapter 2005-278, § 28, Laws of Florida (2005). Under the amended law, the Secretary of State is required to determine the total number of verified valid signatures “from the signatures verified by the supervisors of elections and recorded in the statewide voter registration system.” Section 100.371(4), Fla. Stat. (2007). The Division of Elections anticipated that the number of verified valid signatures would be able to be determined solely from the statewide voter registration system, and therefore amended Rule 1S-2.0091, F.A.C., to provide that “[t]he Division shall determine from the verified petition signatures recorded in the statewide voter registration system whether the constitutionally requisite number of verified signatures has been obtained”

Recently, the Secretary of State’s staff noticed discrepancies in the numbers of signatures being verified in the statewide voter registration system. These discrepancies can be explained, in part, by human error. For example, some county supervisor of elections’ staff established the initiative petitions as local, not statewide, petitions; the staff linked local petition numbers to the state petition numbers incorrectly; and vendors and elections staff used computer programs to batch petition input into the statewide voter registration system that did not distinguish between signatures recorded prior to and after January 2007. These discrepancies have seriously undermined the integrity, accuracy, and reliability of the signatures recorded in the statewide voter registration system. The Secretary of State now lacks confidence in the accuracy of signature verification numbers reported in the statewide voter registration system. The Secretary of State believes paper certifications from the county supervisors of elections reflect the most accurate accounting of verified signatures and he therefore desires to base his determination of the constitutionally required numbers on paper certifications. The Secretary’s verification process would be very similar to the process that existed in rule prior to January 2007.

The Emergency Rule is necessary to ensure an accurate counting of signatures verified by the supervisors of elections as it will not require the Secretary of State to base his determination solely upon the signatures recorded in the statewide voter registration system. The Secretary must

determine by February 1, 2008, which proposed amendments have been signed by the constitutionally required number and distribution of electors. Section 100.371(1), Fla. Stat. (2007). There is insufficient time to amend Rule 1S-2.0091 through the normal rulemaking process prior to the February 1st deadline. Procedures must be in place on February 1st that will provide the Secretary of State the ability to base his certification on the most accurate count available of signatures verified by the supervisors of elections. Absent this emergency rule, there will be an adverse effect on the conduct of elections and the initiative process in the State of Florida. Therefore, this emergency rule is necessary to provide the Secretary of State with the ability to make the most accurate certification on initiative petitions proposing constitutional amendments and to ensure and maintain the efficiency, integrity, and public confidence in the initiative process. Based on the foregoing, the Department of State finds that the adoption of this rule is necessary to prevent an immediate danger to the public health, safety and welfare.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Division of Elections is aware of the rulemaking procedures prescribed by Section 120.54, Florida Statutes. That process requires advance notice to the general public of intended rules and the opportunity to submit comments on the intended rule, prior to the agency’s adoption of the rule. The time period for general rulemaking takes at least 60 days and will prevent the timely amendment and adoption of a rule needed to amend the method used by the Secretary of State to verify the signatures on constitutional amendment initiative petitions before February 1, 2008. This emergency rule will permit the Secretary of State to make the most accurate determination whether the requisite number of signatures has been obtained. This emergency rule represents a return to the way the Secretary of State made that determination by rule prior to January 2007. On January 9, 2008, the Secretary of State held teleconferences with representatives of the sponsors of initiative petitions, and with members of the press, regarding the Secretary’s lack of confidence in the signature numbers in the statewide voter registration system and informed them that he would be obtaining, and relying upon, paper certifications from each county supervisor of elections.

SUMMARY: This emergency rule removes the requirement that the determination of the constitutionally requisite number of signatures verified by the supervisors of elections with respect to constitutional initiative petitions be based solely upon the number of verified signatures recorded in the statewide voter registration system.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: This emergency rule removes the requirement that the determination of the constitutionally requisite number of signatures verified by the supervisors of

elections with respect to constitutional initiative petitions be based solely upon the number of verified signatures recorded in the statewide voter registration system.

THE FULL TEXT OF THE EMERGENCY RULE IS:

1SER08-1 (1S-2.0091) Constitutional Amendment Initiative Petition; Submission Deadline; Signature Verification.

(1) Submission. Signed initiative petition forms proposing amendments to the Florida Constitution shall be submitted solely by the sponsoring political committee to the Supervisor of Elections in the county in which the petition forms were circulated. It is the responsibility of the sponsoring political committee to ensure that the signed petition form is properly filed with, or if misfiled forwarded to, the Supervisor of Elections of the county in which the signer 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.

(2) Signature Verification.

(a) In accordance with the signature verification fee provisions in Section 99.097(4), F.S., the Supervisor of Elections shall verify the signatures on each initiative petition form within 30 days of receipt of the form to ensure that each person signing the petition form:

1. Was, at the time of signing and verification of the petitions, a registered voter in the county in which the petition is submitted,

2. Had not previously revoked his or her signature on the petition,

3. Had not signed the petition form more than four years prior to the date the Supervisor verified the petition, and

4. Had not ever previously signed a petition form containing the identical initiative.

(b) The Supervisor shall not verify a signature on an initiative petition form unless all of the following information is contained on the petition form:

1. The voter's name,

2. The voter's residential street address (including city and county),

3. The voter's 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.

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

(4) Recordation of Verification. No later than 24 hours after verification of signatures on submitted initiative petition forms, the Supervisor of Elections shall directly record into the statewide voter registration system each valid and verified signature. 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.

(a) ~~Determination of Constitutionally Requisite Number of Signatures. The Division shall determine from the verified petition signatures recorded in the statewide voter registration system whether the constitutionally requisite number of verified signatures has been obtained with respect to each constitutional amendment for each congressional district and the State as a whole.~~ 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 recorded in the statewide voter registration system no later than 5:00 p.m. on February 1 of the year in which the general election is held.

(b) Prior to any determination that the constitutionally requisite number of signatures has been obtained for purposes of placing an amendment by initiative on the ballot, the Division shall determine in accordance with Rule 1S-2.0095, F.A.C., the number of verified petition revocations recorded no later than 5:00 p.m. on February 1 of the same year. The Division shall then deduct that number from the number of verified signatures recorded for the underlying applicable constitutional initiative amendment. Upon a determination that the constitutionally requisite number of signatures has been obtained, the Secretary of State shall issue a certificate of ballot position in accordance with Section 100.371, F.S., to the appropriate sponsoring political committee and assign a designating ballot number.

(c) For any constitutional amendment by initiative that obtained a certification of ballot position prior to the effective date of this rule, a determination shall be made whether the number of verified signatures for petition revocations recorded as of 5:00 p.m. on February 1 of the year in which the next general election is held is sufficient to reduce the number of verified signatures for the underlying initiative amendment below the constitutionally required number of signatures obtained for ballot placement. If the number of recorded verified petition revocations is sufficient, then the initiative amendment is removed or stricken from the ballot in accordance with subsection 1S-2.0011(3), F.A.C.

(5) 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.

Specific Authority 20.10(3), 97.012(1), 100.371(7) FS. Law Implemented 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, 1-14-08.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: January 14, 2008

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

Section V
Petitions and Dispositions Regarding Rule
Variance or Waiver

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

WATER MANAGEMENT DISTRICTS

NOTICE IS HEREBY GIVEN THAT on December 17, 2007, the St. Johns River Water Management District, received a petition for variance from Malabar Cove, LLLP, pursuant to Section 120.542, Florida Statutes. Petitioner is seeking a variance from subparagraph 40C-41.063(1)(c)1., F.A.C., and Section 11.1.3 of the Applicant's Handbook: Management and Storage of Surface Waters (February 1, 2005) (A.H.), for Environmental Resource Permit (ERP) Application 4-009-113800-1. The permit applicant is proposing to construct a surface water management system, including wet detention ponds that discharge into the Melbourne-Tillman Water Control District canal system, to serve a residential development known as Malabar Cove, in Brevard County. subparagraph 40C-41.063(1)(c)1., F.A.C., and Section 11.1.3, A.H., prohibit the construction, operation, and maintenance of a surface water management system in the Upper St. Johns River Hydrologic Basin that results in an increase in the amount of water being diverted from the Basin to coastal receiving waters. These rules are intended to protect the water resources of the state by limiting discharges of fresh water to estuarine waters and curtailing interbasin diversion. Comments

on this petition should be filed with Robert Nawrocki, District Clerk, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177-2529, within 14 days of publication of this notice. The petition has been assigned F.O.R. Number 2007-85.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Timothy A. Smith, Senior Assistant General Counsel, at the Office of General Counsel, St. Johns River Water Management District, 4049 Reid Street, Palatka, Florida 32177, or by telephone at (386)312-2347.

NOTICE IS HEREBY GIVEN THAT on January 7, 2008, the South Florida Water Management District (District), received a petition for waiver from South Florida Stadium Corporation, Application No. 08-0107-1M, Permit Modification Number 13089 for utilization of Works or Lands of the District known as the C-9 Canal, Section 34, Township 51 South, Range 41 East, Miami-Dade County to allow temporary fencing and intermittent parking along the south right of way of the C-9 canal between N. W. 27th Avenue and the Florida Turnpike in conjunction with the Miami Dolphin Football Season 2008 through 2011 and other stadium related activities. The petition seeks relief from subsections 40E-6.011(4), (6) and paragraph 40E-6.221(2)(j), Florida Administrative Code, which governs the placement of permanent and/or semi-permanent above-ground facilities within 40 feet of the top of the canal bank and generally prohibits parking within Works or Lands of the District.

A copy of the Petition for Variance or Waiver may be obtained by contacting: Juli Triola at (561)682-6268 or e-mail at jtriola@sfwmd.gov. The District will accept comments concerning the petition for 14 days from the date of publication of this notice. To be considered, comments must be received by the end of business on the 14th day at the South Florida Water Management District, 3301 Gun Club Road, MSC 1410, West Palm Beach, FL 33406, Attn: Juli Triola, Office of Counsel.

NOTICE IS HEREBY GIVEN THAT on January 8, 2008, the South Florida Water Management District (SFWMD) has issued an order.

The SFWMD Governing Board issued an Order Granting Waiver under Section 120.542, Florida Statutes (SFWMD 2008-008-DAO-ROW), on January 8, 2008, to Florida Department of Transportation. The petition for waiver was received by the SFWMD on July 24, 2007. Notice of receipt of the petition requesting the waiver was published in the F.A.W., Vol. 33, No. 35, on August 31, 2007. No public comment was received. This Order provides a waiver for the placement of a continuous concrete barrier wall with bicycle railing, portions of a sidewalk and the installation of slope protection with the northerly right of way of the Old Pompano Canal beginning immediately west of Dixie Highway continuing westerly, a distance of approx. 1,450 feet; Sections 34 & 35, Township 48