

**State of Rhode Island and Providence Plantations  
Rhode Island Board of Elections**

**Public Notice of Proposed Rule-Making**

Pursuant to the provisions of Title 17 of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Rhode Island Board of Elections hereby gives notice of its intent to amend the following; **Rules and Regulations for Provisional Voting** (ERLID # 4113 last filed 08/23/2006)

This rule is proposed for amendment by the Board of Elections for the purpose of amending the procedure for the casting, certification and tabulation of provisional ballots pursuant to the requirements of the Help America Vote Act of 2002, hereinafter referred to as ("HAVA") and to satisfy the requirements of voter identification at the polling places on election day in the state of Rhode Island.

The proposed Rules and Regulations are available for public inspection online at the Rhode Island Secretary of States proposed rules and regulations database ([www.sos.ri.gov/ProposedRules/](http://www.sos.ri.gov/ProposedRules/)), via the Board of Elections website ([www.elections.ri.gov](http://www.elections.ri.gov)), in person at the Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, requested by email at [GMcBurney@elections.ri.gov](mailto:GMcBurney@elections.ri.gov) or by calling Gregory McBurney at 401-222-1914.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by 02/22/2012 to Robert Kando, Rhode Island Board of Elections, 50 Branch Ave. Providence, R.I. 02904, 401-222-2345, [Feedback@elections.ri.gov](mailto:Feedback@elections.ri.gov). A public hearing to consider the proposed amendment shall be held on 02/22/2012 at 3:30 P.M. at 50 Branch Ave. Providence, R.I. 02904 at which time and place all persons interested will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling 401-222-2345.

# State of Rhode Island and Providence Plantations Board of Elections

## Concise Summary of Proposed Non-technical Amendments To RULES AND REGULATIONS FOR PROVISIONAL VOTING

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, the following is a concise summary of proposed non-technical amendments:

Added a New Cover Page

Section 1: Mentioned Rhode Island's new Voter ID law as a reason for amending the rule.

Section 2: Added definitions for "Provisional Ballot Voter Registration" and "Voter Identification".

Section 4:

Part A.: Breaks down the reasons for casting a provisional ballot into four numerical categories.

Part B.: Includes the word qualified when talking about registered voters, and adds a section about signature validation.

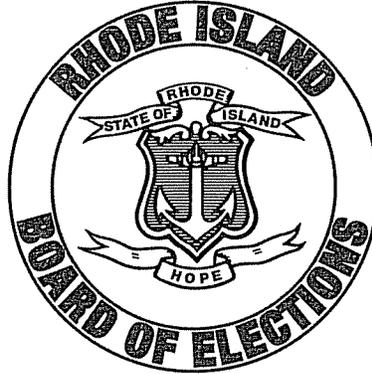
Section 5: Changes are made to revise the Provisional Ballot application.

Section 6:

Part A.: Establishes deadlines for voters to submit additional information for their ballot status, and pushes back the deadline for local boards to return provisional ballots to the Board of Elections.

Part B.: Establishes guidelines for local boards to verify signature identification on a provisional ballot, and ensure the voter is given the opportunity to provide documentation to assist in qualifying their provisional ballot. Language is also included affiliating any unaffiliated voter to the party of the primary they participate in.

Section 8: Adds a section for the provisional ballot to be accepted as "Counted- President/Vice President and US Senator (Providence Only)".



**RULES AND REGULATIONS**  
**FOR PROVISIONAL VOTING**

As Amended:

08/23/2006

02/22/2012

**PROPOSED**

**Promulgated by order of**  
**The Rhode Island State Board of Elections**  
**Frank J. Rego, Chairman**

~~AMENDED~~ RULES & REGULATIONS  
FOR PROVISIONAL VOTING ADOPTED BY THE  
RHODE ISLAND BOARD OF ELECTIONS

*The Rhode Island Board of Elections hereby amended the within rules and regulations relating to provisional voting pursuant to and in accordance with the Help America Vote Act of 2002 ("HAVA") (P.L. 107-252) and sections 17-7-5 et seq.- and 17-19-24.1 et seq. of the Rhode Island General Laws of 1956, as amended.*

*Said rules and regulations were amended pursuant to the Administrative Procedures Act (R.I.G.L. §42-35 et seq.) and are available for public inspection at the offices of the Rhode Island Board of Elections, 50 Branch Avenue, Providence, Rhode Island.*

**Section 1. Purpose**

The within rules and regulations were hereby adopted by the Board of Elections for the purpose of amending the procedure for the casting, certification and tabulation of provisional ballots pursuant to the requirements of the Help America Vote Act of 2002, hereinafter referred to as ("HAVA") and to satisfy the requirements of voter identification at the polling places on election day in the state of Rhode Island.

**Section 2. Definitions**

"Ballot Identification Number" or "Ballot ID No." shall mean the number appearing on a "Provisional Ballot Application" and which is unique to the application. The number shall be used by election officials to process an individual's provisional ballot and shall be used by the individual to determine the disposition of his/her ballot. The identity of the individual assigned the number shall be confidential.

"Board of Canvassers" or "Local Board" shall mean the board of canvassers in a city or town.

"Board of Elections" or "State Board" shall mean the Rhode Island Board of Elections.

"CVRS" shall mean "Central Voter Registration System" which identifies voters statewide.

"Disqualified Ballot" shall mean a provisional ballot executed by an individual who is ineligible to vote in the election that the ballot was cast or a provisional ballot that is inserted into the voting machine.

"Federal Office" shall mean President of the United States, Vice President, Senator, Representative, or Presidential Delegate to the Congress.

"Federal Offices Only Ballot" shall mean a ballot executed by an individual who is deemed eligible to vote for federal offices only in the election at which the ballot was cast.

“Full Ballot” shall mean a ballot executed by an individual who is deemed eligible to vote for all offices and questions appearing on the ballot in the election at which the ballot was cast.

“Provisional Ballot” shall mean a ballot cast by an individual meeting the eligibility requirements set forth in these rules and regulations.

“Provisional Ballot Application Packet” shall mean the documents prescribed in these rules and regulations and executed by a voter seeking to cast a provisional ballot and used by the local board to determine the disposition of a provisional ballot.

“Provisional Ballot Voter Registration” form shall mean a generic form which will be used in lieu of a Rhode Island Voter Registration form.

“Voter Identification” shall mean an acceptable form of identification to validate a voters identity in accordance with RIGL 17-19-24.2

“Voting District” or “Precinct” shall mean the geographical subdivision within a city/town assigned to voters pursuant to §17-11-1.

### **Section 3. Voter Information - Public Posting**

Election officials at each precinct shall publicly post on the day of each election voting information that shall include:

- a) a sample version of the ballot used in the election;
- b) information regarding the date of the election and the hours during which the polling places are open;
- c) instructions on how to cast a vote and instructions on how to cast a provisional ballot;
- d) instructions for mail registrants and first-time voters;
- e) general information on voting rights and prohibitions regarding acts of fraud and misrepresentation under Federal and State law, information on the right of an individual to cast a provisional ballot and instructions on how to contact an election official if an individual’s rights have been violated.

### **Section 4. Provisional Voting – Eligibility & Information**

#### **A. Eligibility Categories (multiple categories may apply)**

An individual shall be eligible to cast a provisional ballot if:

Category 1 - The individual declares that he/she is a registered voter and eligible to vote in the precinct but is informed by an election official on election day that the individual’s name does not appear on the official list of registered voters for the precinct or the that the individual’s name is listed in another precinct of the city/town. Except voters who file voter

affirmation forms under R.I.G.L 17-9.1-16.

Category 2 - The official list of registered voters indicates the voter has applied for a mail/emergency ballot; or

Category 3 - An election official asserts that the individual is not eligible to vote (including partisan and non-partisan primaries); or

Category 4 - The individual registered to vote by mail but is unable to provide the required voter identification prior to or at the time of voting.

## **B. Information**

An individual who qualifies to casting a provisional ballot shall receive a "Notice - Provisional Voting Information" document from an election official. The "Notice - Provisional Voting Information" document shall include the following information:

- 1) disposition of an individual's provisional ballot shall be:
  - a) counted as a full ballot if an individual is a qualified registered voter in the city/town and precinct;
  - b) federal offices only will be counted if the individual is a qualified registered voter in the city/town and proper congressional district, but not the precinct; or
  - c) the ballot will be disqualified if the individual is not a qualified registered voter in city/town or is in the wrong congressional district in which the individual casts his/her ballot; or
  - d) the ballot will be disqualified if it is determined that the individual is a first-time voter who has registered to vote by mail after January 1, 2003 and has not submitted the required form of identification to the local board or the Board of Elections by 94:00 p.m. on the day of following the election; or
  - e) the ballot will be disqualified if it is determined that the individual's signature on the provisional ballot application does not reasonably match the signature on the individual's most current voter registration document. First time voters in Section 4B(d) are not covered by this section.
  - f) if the individual has cast a mail ballot, emergency ballot or military ballot in the same election the ballot will be disqualified; and
- 2) Instructions on how the individual may determine the disposition of his/her ballot, including whether or not the vote was counted and the reason for any disqualification

- 3) Information stating that the provisional ballot will be disqualified if it is inserted into the voting machine.

## Section 5. Provisional Ballot Application And Instructions

### A. Provisional Ballot Application

The "Provisional Ballot Application" shall include the following:

#### Section A1:

- Board of canvassers disposition area, where the board of canvassers indicates the disposition of the provisional ballot.
- ~~The ballot identification number;~~
- A location for an election official to include the name of the city/town and precinct number where the ballot is being cast; and
- ~~A location for the local board to indicate the disposition of the provisional ballot.~~

#### Section B2

- Provisional Ballot Voter Registration Form
- Ballot ID number
- Voter Attestation clause, where the provisional voter shall attest that he/she is a registered voter in the city/town & precinct and is eligible to vote in the election and acknowledges that inserting a provisional ballot into the voting machine will result in its disqualification;
- A location for the voter to sign;
- A location for the date of the election;
- A location for an election official to cite the reason an individual has been given a provisional ballot; and sign and attest to the provisional voters signature.
- Primary election only section, where the clerk MUST indicate which political party ballot was requested by the provisional voter.
- A secondary location for the local board to indicate the disposition of the provisional ballot.

#### Section D3 "Provisional Ballot Receipt" ("Tear-Off Receipt") shall include:

- the ballot identification number; and
- instructions on how the individual may determine whether his/her vote was counted and to advise the provisional voter to contact his/her local board of canvassers on/or before the close of business the next business day to provide information to help qualify the provisional ballot. the

reason for ruling that a ballot is limited to “Federal Offices” only or “Disqualified”.

The Board of Elections may include any additional items on the “Provisional Ballot Application” consistent with state or federal laws.

## B. Instructions For Casting A Provisional Ballot

- 1) An individual who is eligible to casts a provisional ballot shall receive from a election official the “Notice – Provisional Voting Information”, and a provisional ballot application.
- 2) ~~When an individual chooses to vote casts a Provisional Ballot the election official shall provide a “Provisional Ballot Application” to the individual~~
- 2) Each provisional voter shall complete and submit the voter portion of the “Provisional Ballot Application” to an election official.
- 3) The election official upon completing sections “2C” shall provide the individual a ballot labeledmarked “Provisional” in red ink, a ballot secrecy sleeve and a provisional ballot envelope, that has printed instructions on how to cast a provisional ballot. The election official shall then directs the individual to a privacy booth.
- 4) The individual shall “vote” his/her provisional ballot by using the marking device provided, connecting the head and tail of the arrow on the computer ballot next to the party, candidate, write-in candidate or ballot question, as is applicable, for whom the voter wishes to cast his/her ballot (Note: A provisional ballot that is incorrectly marked by the voter shall be returned to the election official. The ballot will be marked void by the election official and deposited in the receptacle for void ballots. The individual will then be issued a new ballot labeledmarked ‘Provisional’.)

Upon completing the ballot the individual shall place the ballot in the “Provisional Ballot Envelope” and seal the envelope containing the voted ballot. The individual will then return the “Provisional Ballot Packet” that includes the sealed provisional ballot envelope and affixed application to the election official who shall confirm that the city/town and precinct number is entered onto the provisional ballot application and remove Section 5 (the provisional ballot receipt) and present it to the voter, who shall retain the “Provisional Ballot Receipt” as well as the “Notice – Provisional Voting Information.” The election official shall place the “Provisional Ballot Envelope” into the receptacle for provisional ballots.

- 7) ~~The election official shall confirm that the city/town and precinct number is entered onto the provisional ballot application and remove Section D (the provisional ballot receipt) and present it to the voter, who shall retain the "Provisional Ballot Receipt" as well as the "Notice Provisional Voting Information."~~
- 8) ~~The election official shall place the "Provisional Ballot Packet" into the receptacle for provisional ballots.~~

## **Section 6. Processing And Certifying Provisional Ballots**

Provisional ballots cast at a precinct shall be transmitted to the board of canvassers in each city/town pursuant to the manner prescribed by the Board of Elections. Said ballots shall be processed and certified by the board of canvassers in the city/town in which they were cast.

### **A. Processing Provisional Ballots**

The local board shall process the provisional ballots cast in the city/town in the following manner.

- 1) Upon receipt of the provisional ballot receptacles from each precinct the local board shall separate, sort by precinct and secure said ballot receptacles.
- 2) On a precinct by precinct basis the local board shall proceed to open the provisional ballot receptacles and remove the "Provisional Ballot Envelopes." The local board shall verify that each envelope has the correct city/town and precinct ID number. The local board shall determine the disposition of each provisional ballot within each precinct pursuant to the requirements and procedures set forth in Subsection 6(B).
- 3) ~~Within forty eight (48) hours~~ By 4:00pm the day following the election the local board will accept any additional information that the provisional ballot voter submits and determine the disposition of the provisional ballot and enter the required information into the CVRS and shall:
  - a) Detach and retain Section B 2, Provisional Ballot ~~RI~~ Registration Form and Section C 4, Voter Attestation (which shall remain affixed to each other) of the "Provisional Ballot Application" (Note: Section A 1 shall remain affixed to the "Provisional Ballot Envelope"; see Subsections 6(A)(4) of these rules and regulations for instructions on processing Sections B 2 and C 4 of the "Provisional Ballot Application");
  - b) The local board shall sort the provisional ballots cast at a precinct by disposition (i.e. all qualified "Full Ballots" on top followed by all qualified ballots for "Federal Offices Only") and place the qualified provisional ballots into the provisional ballot receptacle from which they were

delivered. Disqualified ballots are retained and stored at the local board for 22 months.

- c) When the certification process is completed for each precinct the local board shall sort the provisional ballot receptacles in order by precinct and transfer them to the Board of Elections ~~within twenty-four (24) hours~~ by 4:00pm the second day following of the election.
- 4) After Section ~~B2~~ – Provisional Ballot RI Voter Registration Form and the provisional ballot data is entered into the CVRS the local board shall file Section ~~B2~~ in the same manner as other RI Voter Registration forms. Section ~~C4~~ Voter Attestation of the “Provisional Ballot Application” will be sealed in an envelope labeled “Provisional Ballots – Attestation” which shall remain sealed for twenty-two (22) months after the date of the election.

## B. Certifying Provisional Ballots

The local board shall determine the disposition of a provisional ballot per Sec 4(a) as follows:

- 1) If the individual’s name, date of birth and city/town can be reasonably identified in Section ~~B2~~– Provisional Ballot RI Registration Form of the “Provisional Ballot Application” in the CVRS the individual shall be an eligible voter in the city/town and vote pursuant to ~~(a)~~ or ~~(b)~~ below.
  - a) When the street address on the “Provisional Ballot Application” matches the street address on the CVRS or the street address on the “Provisional Ballot Application” is in the same precinct as the street address on the CVRS. the local board shall indicate on Section A 1 – Provisional Ballot Application “Full Ballot,” unless the individual requested a mail/emergency ballot.
  - b) When the street address on the “Provisional Ballot Application” does not match the street address on the CVRS and the street address is located outside of the precinct where the provisional ballot was cast the local board shall indicate on Section A 1 – Provisional Ballot Application “Federal Offices Only,” except in the City of Providence, where the street address on the “Provisional Ballot Application” does not match the street address on the CVRS and is located outside the Congressional District where the provisional ballot was cast, the individual shall be eligible to cast a ballot for the offices of United States President, Vice President and Senator, the local board shall so indicate on Section A 1 - Provisional Ballot Application, unless the individual requested a mail/emergency ballot.
- 2) If the name, date of birth and city/town in Section ~~B 2~~ – Provisional Ballot RI Registration form matches the name, date of birth and city/town with an individual who has surrendered or rescinded his/her mail ballot or emergency

ballot for the same election to the local or state board, and the CVRS system confirms surrender or rescinding of said ballot the local board shall determine the disposition of the provisional ballot in the same manner as B(1) of this section.

- 3) If the name, date of birth and city/town on the Section B 2 – Provisional Ballot RI Registration form matches the name, date of birth and city/town with an individual who has requested and cast a mail/emergency ballot and the CVRS confirms the receipt of the ballot the local board shall indicate “disqualified” on Section A 1 – Provisional Ballot Application, and place the “Disqualified Provisional Ballot Envelopes” cast within a city/town into a sealed container for storage in accordance with §17-19-39.1.
- 4) If on the “Provisional Ballot Application” the reason for casting the provisional ballot is “Voter did not present required identification,” and the voter has not submitted the required form of identification at the local board by 94:00 p.m. on the local board shall compare the voter’s signature on record with the signature on the provisional ballot with consideration of the natural variations of signatures, the lapse of time between signatures, disparities between electronically recorded keypad signatures and handwritten signatures, as well as other factors that may distort signatures, and if any similarities exist, the local board shall then qualify the provisional ballot according to the criteria indicated in Section 6(B) of these rules & regulations, and the local board shall indicate the disposition on Section 1 of the Provisional Ballot Application.

If the local board determines that the signatures do not appear to be the same, the local board shall make every effort to contact the voter in question immediately following its preliminary determination to allow the voter the opportunity to prove his/her identity by:

- 1) Presentment of any ID to the local board;
- 2) Signing a new voter registration card at the local board of canvassers that reasonably matches the signature on the provisional ballot or;
- 3) Any other means acceptable to the local board.

If the local board determines that the signatures are not the same, and the provisional voter’s identity is not otherwise confirmed, the provisional ballot shall be disqualified.

This section excludes first time voters who registered to vote by mail after 1/1/2003, because they have not provided the necessary proof of identification and are listed as identification required on the pollbook. These voters must submit proof of identification to the local board by 4:00pm on the day following the election. If no identification is presented, the local board shall indicate “Disqualified” on Section 1 of the Provisional Ballot Application, and place the “Disqualified” ballot into the “Disqualified Provisional Ballot Envelope”. “Disqualified Provisional

Ballot” envelopes cast within a city/town must be placed into a sealed container for storage in accordance with 17-19-39.1. The comparison of signatures is not allowed for voters who registered to vote by mail after 1/1/2003 and have not provided the required identification.

~~5) If on the “Provisional Ballot Application” the reason for casting the provisional ballot is “Voter did not present required identification” and the voter has presented the required form of identification at the local board by 9:00 p.m. on election day, if the local board determines that the signature on the provisional application does not match the signature on the voters registration form or a completed signing with a mark affidavit per RIGL 17-19-30 is included with the application. the ballot shall be given a disposition according to the criteria indicated in Sec. 6(B) of these regulations and the local board shall indicate the disposition on Section A1 – Provisional Ballot Application.~~

5) If on the “Provisional Ballot Application:” the reason for casting the provisional ballot is “PRIMARY ONLY: The voter claims he/she is unaffiliated or affiliated with a different party than indicated on the precinct voting list” the ballot shall be qualified if the voter cast a ballot his/her party affiliation or if the voter was unaffiliated. The provisional ballot shall be disqualified if the voter was a member of another party..

6) If the individual’s name, date of birth and city/town in Section B2 – Provisional Ballot RI Registration Form of the “Provisional Ballot Application” cannot be reasonably identified in the CVRS, the local board shall indicate “disqualified” on Section A1 - Provisional Ballot Application, and place the “Disqualified Provisional Ballot Envelopes” cast within a city/town into a sealed container for storage in accordance with §17-19-39.1.

~~7) Mail ballots of first-time registrants received by the Board of Elections that do not include the required identification shall be provisional ballots and “disqualified”, unless the required identification is received by 9:00 pm on election day by the local board or the Board of Elections at which the provisional ballot status shall be removed and the ballot will be counted as a mail ballot. The state board shall place the “Disqualified Provisional Ballot Envelopes” into a sealed container for storage in accordance with §17-19-39.1.~~

## **Section 7. Tabulation Of Provisional Ballots**

### **A. Provisional Ballots Cast At A Precinct**

Provisional ballots cast at a precinct and certified pursuant to Section 6 shall be transmitted by the local board to the state board for tabulation. Upon receipt of all of the eligible provisional ballots cast in a city/town the state board shall:

- 1) Separate the "Provisional Ballot Envelopes" into the following categories:
  - a) "Full Ballots";
  - b) "Federal Offices Only"; and
- 2) To protect voter privacy, the state board shall open all "Provisional Ballot Envelopes" certified as "Full Ballots" and separate each ballot from its "Provisional Ballot Envelope" and:
  - tabulate all "Full Ballots" and
  - upon completion of the tabulation process the state board shall place the ballots and the "Provisional Ballot Envelopes" into a sealed container that shall be returned to the local board for storage in accordance with §17-19-39.1.
- 3) To protect voter privacy, the state board shall open all "Provisional Ballot Envelopes" certified as "Federal Offices Only" and separate each ballot from its "Provisional Ballot Envelope" and:
  - tabulate all "Federal Offices Only" ballots and
  - upon completion of the tabulation process the state board shall place the ballots and the "Provisional Ballot Envelopes" into a sealed container that shall be returned to the local board for storage in accordance with §17-19-39.1.
- 4) Upon completion of the tabulation of all "Full" and "Federal Offices Only" ballots the state board shall add the number of provisional votes cast to the Election Day precinct results.

**B. Provisional Ballots cast as Mail Ballots**

Mail ballots of first-time registrants received at the Board of Elections that do not include the required identification shall be a provisional ballot and "disqualified" unless the required identification is received by 9:00pm on election day at the local board or the Board of Elections. If the local board or the state board receives the required identification the ballot shall be counted and processed as a mail ballot.

**Section 8. Access To Provisional Ballot Information**

**A. Access System To Determine Disposition Of Ballot**

- 1) The Board of Elections shall maintain a website with a "link" which allows the provisional voter to enter his/her last name and "Ballot ID No." to access the disposition of his/her ballot which shall be:
  - a) "Counted - Full Ballot"; or
  - b) "Counted – President/Vice President and US Senator (Providence Only); or
  - c) "Counted - Federal Offices Only" and the reason for the disposition; or
  - d) "Disqualified – Ballot Not Counted" and the reason for the disposition.

- 2) If the provisional voter is unable to access the Board of Elections website he/she may contact the Board of Elections at (401) 222-2345 and provide his/her last name and "Ballot ID No." to obtain the information referenced in Section 8(A)(1).

**B. Confidentiality Of Provisional Ballots**

Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. Election officials during the casting, transmittal, certification and tabulation of provisional ballots shall take all necessary precautions to protect the security and confidentiality of each ballot to ensure that information related to the ballot, including its disposition, shall be restricted to the individual who cast the ballot.

**Section 9. Implementation**

The Board of Elections shall promulgate procedures and forms necessary to implement the within rules and regulations required by the Help America Vote Act of 2002 and the Rhode Island General Laws .

These amended rules and regulations with regard to provisional voting are adopted this 24<sup>th</sup> ~~Twenty-second~~ day of ~~July, 2006~~ February, 2012 pursuant to R.I.G.L. 42-35-1, *et seq.* (last filed with administrative records on 3/7/05).

Rhode Island Board of Elections

Thomas A. Iannitti Frank A. Rego                    
Acting Chairman Date

                                     
Robert Kando                             
Executive Director date Date