

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Ethics and Elections Committee

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BILL: SJR 106

INTRODUCER: Senators Aronberg and Smith

SUBJECT: Open Primary Elections

DATE: April 3, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Joint Resolution 106 amends the Florida Constitution to permit all eligible electors, regardless of party affiliation, to cast a ballot in the primary election if the winner of the primary will be opposed in the general election by a write-in candidate only. The current open primary provision has been interpreted to “close” the primary to all but party-registered voters in such circumstances.

This joint resolution proposes an amendment to Article VI, Section 5, of the State Constitution. It will take effect on January 2, 2007, if adopted by a majority vote in the November 2006 general election.

## II. Present Situation:

In November 1998, Florida voters overwhelmingly passed<sup>1</sup> Proposition 11, a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission. Part of Proposition 11 amended the Constitution to provide for “open” primaries --- primaries where all eligible voters could cast a ballot regardless of party affiliation --- where the winner of the primary elections would face *no general election opposition*. In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

The 1998 CRC debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of

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<sup>1</sup> The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, [www.election.dos.state.fl.us](http://www.election.dos.state.fl.us) (“Election Results” tab, General Election 1998, Constitutional Amendments).

candidates from one of the major parties; further, the CRC discussions *never even mentioned write-in candidates* in the context of open primaries at all.<sup>2</sup>

Florida law clearly indicates that a write-in candidate constitutes “general election opposition.”<sup>3</sup> In 2000, the Florida Division of Elections formally opined that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field will “close” the primary to all voters other than those registered with that particular party.<sup>4</sup>

At the request of the bill sponsor last year, committee staff reviewed all the legislative races since the effective date of the open primary amendment. The review revealed the following (as updated for the special election in June 2005 to fill the seat vacated by Rep. Coley):

- 458: Total # of legislative races (2000: 20, Senate; 120, House / 2002: 40, Senate; 120, House/ 2004: 20, Senate; 120 House / 18 Special Elections)
- 30: # of primaries that were “closed” due exclusively the fact that a write-in candidate qualified for the race. None of the 16 occurred in special elections.
  - [2004: 14 total --- 9(REP)/5(DEM); 1 Senate Race --- (REP); 13 House Races --- 8(REP); 5(DEM)]
  - [2002: 8 total --- 5(REP)/3(DEM); 3 Senate Races--- 2 (REP)/1(DEM); 5 House Races --- 3(REP)/2(DEM)]
  - [2000: 8 total --- 5(REP)/3(DEM); 1 Senate Race (REP); 7 House Races --- 4(REP)/3(DEM)]
- 6.6%: Percentage of the legislative races where the presence of a write-in was exclusively responsible for “closing” the party primary (30/458).
- 99.8%: Average margin of victory by the partisan candidate over the write-in candidate(s) in the 30 general election races where the presence of a write-in candidate closed the primary.
- 99.0%: The *smallest* margin of victory by the partisan candidate over the write-in candidate in these 30 general election races.
- 10: # of these 30 general election races in which the qualified write-in candidate received a total of 3 votes or less.
- 6: # of these 30 general election races in which the qualified write-in candidate **did not receive a single vote (write-in candidate did not vote for himself or herself).**

### III. Effect of Proposed Changes:

The joint resolution expands the current “open” primary provision by allowing all eligible electors to vote in the primary election for an office if the winner of the primary will be opposed in the general election *solely by a write-in candidate*. The bill does not change current law which “opens” a primary to all registered voters where all the candidates for an office are from the same party, and there is no write-in candidate in the race.

<sup>2</sup> Committee staff has reviewed all available CRC tapes and written materials on the open primary issue.

<sup>3</sup> See ss. 99.061(3)(b), 101.151(2)(a), F.S.(blank space for qualified write-in candidates appear on the general election ballot).

<sup>4</sup> DOE Opinion 2000-06 (May 11, 2000).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The increased number of primary voters will result in marginal cost increases for the supervisors of elections, for such items as: additional poll worker staff and ballot printing costs (in counties using optical scan voting systems).

Also, each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending upon the length of the amendment: however, the cost per amendment is estimated to be approximately \$37,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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