

**The Florida Senate**  
**PROFESSIONAL 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: CS/SB 1820

INTRODUCER: Committee on Ethics and Elections and Senator Aronberg

SUBJECT: Primary election/write-in candidates

DATE: April 23, 2007

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Fav/CS
2.			JU	
3.			TA	
4.				
5.				
6.				

**I. Summary:**

Committee Substitute for Senate Bill 1820 addresses the issue of write-ins closing an open primary by making it more difficult for write-in candidates to qualify, mandating that a write-in candidate either pay a reduced fee or meet a reduced petition signature requirement to qualify.

This bill substantially amend sections 99.021, 99.061, 99.095, 99.092, and 103.121 of the Florida Statutes.

**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 (“CRC”). 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 *all candidates in a race have the same party affiliation* and the winner of the primary election will face *no general election opposition*.

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 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>

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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).

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

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, committee staff reviewed all the legislative races since the effective date of the open primary amendment. The review yielded the following results for state legislative contests:

- 599: Total # of legislative races (2000: 20, Senate; 120, House / 2002: 40, Senate; 120, House/ 2004: 20, Senate; 120 House / 2006: 20, Senate; 120, House/19 Special Elections)
- 38: # of primaries that were “closed” due exclusively to the fact that a write-in candidate qualified for the race. None of the 38 occurred in special elections.
  - [2006: 8 total --- 2(REP)/6(DEM); 3 Senate Races --- 1(REP)/2(DEM); 5 House Races --- 1(REP)/4(DEM)]
  - [2004: 14 total --- 9(REP)/5(DEM); 1 Senate Race ---1 (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)]
- 6.3%: Percentage of the legislative races where the presence of a write-in was exclusively responsible for “closing” the party primary (38/599).
- 99.8%: Average margin of victory by the partisan candidate over the write-in candidate(s) in the 38 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 38 general election races.
- 11: # of these 38 general election races in which the qualified write-in candidate received a total of 3 votes or less.
- 7: # of these 38 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).**

Anyone willing to fill out some paperwork can qualify as a write-in candidate. Unlike party candidates and persons running with No Party Affiliation (“NPA”), there is no requirement that a write-in either: 1) gather petition signatures from 1% of the registered electors in the district; or, 2) pay a qualifying fee (4% of the annual salary of the office sought for NPA candidates, 6% for those seeking a partisan nomination).

### III. Effect of Proposed Changes:

The bill addresses the issue of write-ins closing the open primary by erecting minor barriers to qualifying as a write-in candidate.

Specifically, the bill provides that any person seeking to qualify as a write-in candidate, in addition to filing the necessary paperwork with the filing officer, must either:

<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).

- Pay a qualifying fee equal to 0.7% of the annual salary of the office sought.<sup>5</sup> In addition, a write-in candidate who is a member of a political party must also pay a 0.3% party assessment; or,
- Qualify by the petition method by gathering the signatures of 0.10 % of the registered electors of the district sought to be represented.

The bill also makes conforming and technical changes.

The bill takes effect July 1, 2007.

#### **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:**

Some individuals seeking to qualify as a write-in candidate may choose to pay a fee equal to 0.7% (unaffiliated candidate) or 1% (candidate who is a member of a political party) of the annual salary of the office sought.

Each political party will receive the 0.3% party assessment from write-in candidates affiliated with their party, plus major political parties will receive a rebate of about 80% of the filing fees (0.5%) paid by write-in candidates who are members of the party.

Since the number of write-in candidates who will choose the fee-based qualifying method, the offices such candidates will seek, and the number of candidates who will be affiliated with a political party is uncertain, the precise cost to the individual candidates and the parties cannot be accurately determined.

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<sup>5</sup> The qualifying fee is broken down into: a *filing fee* consisting of 0.5% of the annual salary of the office sought; and, an *election assessment* equal to 0.2% of the annual salary of the office sought.

**C. Government Sector Impact:**

The Elections Commission Trust Fund will receive additional election assessments from write-in candidates choosing to qualify by the fee method (0.2% of the annual salary of the office sought). The General Revenue fund will also profit by receiving the filing fees from minor-party and unaffiliated candidates (0.5% of the annual salary of the office sought), plus about 20% of the filing fees for write-in candidates affiliated with a major political party.

Again, since the number of write-in candidates who will choose the fee-based qualifying method, the offices such candidates will seek, and the number of candidates who will be affiliated with a political party is uncertain, the precise revenue to the government cannot be accurately determined.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill contains an unnecessary provision<sup>6</sup> that prevents someone seeking to qualify as a write-in candidate from changing his or her party affiliation within 6 months of qualifying. This extraneous provision was included in the original bill in support of another provision that the Ethics and Elections Committee removed by amendment relating to moving the write-in candidate to the primary election ballot (in limited circumstances).

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>6</sup> The provision at issue is in section 1 of the bill, to be codified at section 99.021(1)(c)2., F.S.

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

None.

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