

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Committee on Ethics and Elections

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BILL: SB 840

INTRODUCER: Senator Sobel

SUBJECT: Write-in Candidates

DATE: April 3, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	<b>Pre-meeting</b>
2.			RC	

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**I. Summary:**

Senate Bill 840 repeals the statutory requirement that a write-in candidate reside within the district that he or she seeks to represent *at the time of qualification*. Removing this requirement with respect to write-in candidates will make it easier to “close” a major party primary that would otherwise be “open” to *all* voters regardless of party affiliation.

The Florida Constitution sets forth residency requirements for various public officers, including the governor, lieutenant governor, members of the Cabinet, legislators, justices and judges, and county commissioners. The courts have interpreted these requirements to mandate residency within the district represented *at the time of election*.

Section 99.0615, F.S., requires a write-in candidate to reside within the district that he or she seeks to represent *at the time of qualification*. Two Florida appellate courts have recently overturned circuit court decisions on the grounds that the statute conflicts with the applicable constitutional residency requirement. *This issue is currently pending before the Florida Supreme Court.*

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Florida’s “Universal” or “Open” Primary**

For most of its history, Florida was an entirely “closed” primary state; registered Republicans were the only electors who could vote in Republican primaries and Democrats voted in Democratic primaries. That changed in 1998 when the voters approved a constitutional amendment (proposed by the Constitution Revision Commission [“CRC”]) providing for a “universal” primary that was open to all registered voters regardless of party affiliation — *in certain circumstances*. Under the amendment, a primary is open if:

- All the candidates for an office have the same party affiliation; *and*,
- The winner will have no opposition in the general election.<sup>1</sup>

(emphasis added). Write-in candidates constitute *general election opposition*;<sup>2</sup> and therein, as the Bard says, lies the rub. Any write-in candidate that qualifies<sup>3</sup> into an all-Republican or all-Democratic field “closes” the primary to non-party voters — despite the fact that such candidacies are oftentimes illusory (i.e., the write-in candidate raise or spends nominal money [or none at all], does minimal to no campaigning, withdraws shortly after the closed primary is held, and/or receives only a handful of votes (or in some cases *zero votes*, meaning the write-in didn’t even vote for himself or herself!)).

### Write-In Residency Requirement

The requirement that a write-in candidate live in the district that he or she seeks to represent *at the time of qualifying* was adopted in 2007.<sup>4</sup>

In September 2014, the Florida Fourth District Court of Appeal in *Francois v. Brinkmann* found that s. 99.0615, F.S., was unconstitutional because “the timing of its residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established by Article VIII, Section 1(e) of the Florida Constitution.”<sup>5</sup> *This case is currently pending on appeal before the Florida Supreme Court, with oral argument scheduled for Thursday, April 9, 2015.*<sup>6</sup>

The case involved a Broward County Commission primary where five Democrats and one write-in, Mr. Francois, qualified to run for the District 2 seat.<sup>7</sup> Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a write-in

<sup>1</sup> Art. VI, s. 5(b), FLA. CONST.

<sup>2</sup> See *Lacasa v. Townsley*, 883 F.Supp. 1231, 1242-43 (S.D. Fla. 2012) (a write-in candidate could, no matter how unlikely, prevail against a party primary winner in a general election); *Telli v. Snipes*, 98 So. 3d 1284, 1286-87 (Fla. 4th DCA 2012) (similarly concluding that write-in candidates constitute general election opposition for purposes of the constitutional open primary provision); see also, s. 101.151(2)(b), Fla. Stat. (2014) (“In a general election, in addition to the names printed on the ballot, a blank space shall be provided under each office for which a write-in candidate has qualified...”). Unfortunately, the CRC’s historical records indicate that it never considered the write-in issue in the context of proposing the open primary amendment language.

<sup>3</sup> Write-in candidates are not required to pay a filing fee, election assessment, or party assessment in order to qualify. Section 99.061(4)(b), F.S.

<sup>4</sup> Ch. 2007-30, s. 56, Laws of Fla. (codified at 99.0615, F.S.). The change was adopted as a Senate floor amendment to a massive elections package, thus it was never fully vetted through the committee process. Amendment 891618 to CS/CS/SB’s 960 & 1010 (2007) (Senator Aronberg), available at <http://archive.flsenate.gov/data/session/2007/Senate/bills/amendments/pdf/sb0960c2891618.pdf> (last accessed 3 April 2015). The sponsor, Senator Dave Aronberg (D-West Palm Beach), was an outspoken critic of the so-called “write-in loophole.” He filed numerous bills and amendments during his tenure in the Florida Senate that addressed the issue in various ways. See, e.g., SB 1820 (2007), SJR 106 (2006), and SJR 286 (2005).

<sup>5</sup> *Francois v. Brinkmann*, 147 So.3d 613, 616 (Fla. 4th DCA 2014), *appeal pending*, *Brinkmann v. Francois*, SC14-1899 (Fla. Sup. Ct).

<sup>6</sup> See Supreme Court Online Docket, available at [http://jweb.flcourts.org/pls/docket/ds\\_docket\\_search](http://jweb.flcourts.org/pls/docket/ds_docket_search) (last accessed 3 April 2015) (*Brinkmann v. Francois*, Case No. SC14-1899).

<sup>7</sup> *Francois*, 147 So.2d at 614.

candidate.<sup>8</sup> The *Francois* court reasoned that the statute imposed qualifications in contravention of those specified in the constitution and was, therefore, unconstitutional.<sup>9</sup>

One month later, the Florida First District Court of Appeal also overruled the circuit court and held s. 99.0615, F.S., unconstitutional in *Matthews v. Steinberg*.<sup>10</sup> The *Matthews* case involved a write-in candidate for state representative who did not “reside within the district he wished to represent at the time he filed his qualifying paperwork with the Division of Elections.”<sup>11</sup> The *Matthews* court, like the *Francois* court,<sup>12</sup> found that the requirement that residency occur at the time of qualification was in direct contravention of the Florida Constitution’s requirement of residency at the time of election.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill repeals the requirement that a write-in candidate reside in the district he or she seeks to represent *at the time of election*. Without this temporal restriction, it will be easier for folks to qualify as a write-in and “close” major party primaries.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>8</sup> *Id.*

<sup>9</sup> *Francois*, 147 So.3d at 616. As a result, the county conducted a Democratic primary for the open county commission seat on December 4, 2015 at a reported cost of about \$200K; Mr. Francois again qualified as the sole non-Democratic candidate in the field, closing the primary. Brittany Wallman, Sun-Sentinel online, *Broward D2 Race Over: Bogen Is In* (Dec. 5, 2014), available at <http://www.sun-sentinel.com/news/politics/fl-mark-bogen-new-commissioner-20141205-story.html> (last accessed 6 April 2015). Mr. Francois withdrew from the race *the day after the primary was held*, for the stated purpose of saving the taxpayers the additional \$200K that would have to be spent on the special general election scheduled for January 13, 2015. *Id.*

<sup>10</sup> *Matthews v. Steinberg*, 153 So.3d 295, appeal pending, *Steinberg v. Matthews*, SC14-2202 (Florida Supreme Court) (stayed pending the outcome of *Francois v. Brinkmann*, per Florida Supreme Court online docket available at [http://jweb.flcourts.org/pls/docket/ds\\_docket\\_search](http://jweb.flcourts.org/pls/docket/ds_docket_search) [last accessed 3 April 2015]).

<sup>11</sup> *Id.*

<sup>12</sup> *See id.* at 297 (“The statutory requirement directly contravenes and adds to the constitutional fiat that legislators reside in the district at the time of election,” citing *Francois*, 147 So.3d at 615).

<sup>13</sup> *Id.* at 298.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill precludes any possibility, however seemingly unlikely, that the Florida Supreme Court's upcoming decision in *Brinkmann v. Francois* will allow the write-in residency requirement to continue in force. Further, as the bill will likely *not* render the case moot — the appellants are asking the Court to set aside the results of the Broward County District 2 election and order a new one because all voters were not allowed to cast ballots<sup>14</sup> — adopting this bill may result in the legislature voluntarily abandoning an otherwise permissible, constitutionally-*valid* limitation.

**VIII. Statutes Affected:**

This bill substantially amends section 99.0615 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.

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

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<sup>14</sup> Brittany Wallman, Sun-Sentinel online, *State Supreme Court to Hear Broward District 2 Election Case* (Jan. 28, 2015), available at <http://www.sun-sentinel.com/local/broward/fl-writein-candidate-perjury-20150128-story.html>.