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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1494
INTRODUCER:	Ethics and Elections Committee and Senator Rader
SUBJECT:	Write-in Candidate Qualifying
DATE:	April 27, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Fav/CS**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Fox	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE – Technical Changes

I. Summary:

CS/SB 1494 codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*, by repealing the statute that requires a write-in candidate to reside in the district that he or she seeks to represent *at the time of qualifying*.

II. Present Situation:

In November 1998, Florida voters passed Proposition 11,[1] a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission (CRC). Part of Proposition 11 amended Article VI of the Constitution to provide for a "universal" or "open" primary — a contest in which all eligible voters could cast a ballot regardless of party affiliation — wherein the winner of the primary election would face no general election opposition.[2]

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

[1] The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, https://enight.elections.myflorida.com/Index.asp?ElectionDate=11/3/1998&DATAMODE= ("Election Results" tab, General Election 1998, Constitutional Amendments), last accessed Apr. 11, 2017.

[2] Art. VI, s. 5(b), FLA. CONST.

The general election ballot contains a blank line for qualified write-in candidates.[3] Nonetheless, 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.

In 2000, the Florida Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field "closed" the primary to all voters other than those registered with that particular party.[4] (Multiple district and appellate courts have since confirmed the Division's legal position.)[5]

In 2007, faced with write-ins having closed numerous legislative primaries since 2000, the Legislature enacted s. 99.0615, F.S. — which required write-in candidates to reside in the district they sought to represent *at the time of qualifying*.[6]

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois,*[7] a Broward County voter challenged the qualifying status of a write-in candidate, Tyron Francois, for Broward County Commissioner, District 2. Francois did not live in the District at the time of qualifying as required by s. 99.0615, F.S., but he did say that he intended to move there if he won the general election. All of the other candidates that qualified to run for the seat were Democrats. The *Brinkmann* court found that the statute was facially unconstitutional because the timing of its residency requirement (at the time of qualifying) for write-in candidates conflicted with the timing of the residency requirement for county commission candidates in the Constitution (at the time of election).[8]

As a result, beginning with the 2016 election cycle, any registered voter can now qualify to run as a write-in candidate in any contest in the state and close a primary where the only other qualified candidates are from the same party, ***regardless of his or her physical residence***.

III. Effect of Proposed Changes:

The bill codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois.* It repeals the statute requiring write-in candidates to reside in the district they seek to represent *at the time of qualifying*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

---

[3] Section 101.151(2)(b), F.S.
[4] DOE Opinion 2000-06 (May 11, 2000).
[5] *Lacasa v. Townsley*, 883 F.Supp2d 1231 (S.D. Fla 2012); see also, *Telli v. Snipes*, 98 So.3d 1284 (4th Fla DCA 2012) (write-in candidates constitute general election opposition under the constitutional open primary provision).
[6] Ch. 2007-30, s. 56, LAWS OF FLA.
[7] 184 So. 3d 504 (Fla. 2016).
[8] Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4th DCA 2014), *affd.*, *Francois v. Brinkmann*, 184 S.3d 504 (Fla. 2016), citing, *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988) (constitutional provision regarding the residency requirement for county commissioners requires residency at the time of election).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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:

None.

VIII. Statutes Affected:

This bill repeals 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.)

CS by Ethics and Elections on March 28, 2017:
Narrows the title from "elections" to "write-in candidate qualifying."

B. Amendments:

None.