



# The Florida Senate

Interim Project Report 2000-36

September 1999

Committee on Ethics and Elections

Senator Burt L. Saunders, Chairman

## IMPLEMENTATION OF CONSTITUTIONAL AMENDMENT RELATING TO PRIMARY ELECTIONS

### SUMMARY

The voters of Florida approved an amendment to Florida's Constitution during the 1998 General Election to address the issue of Florida's closed primary election system. Although implementing bills were introduced in both the Senate and the House of Representatives during the 1999 Legislative Session, neither of these bills passed the Legislature. In order to avoid confusion by election officials and voters and to avoid letting the executive or judicial branch determine how the amendment will be implemented, the Legislature should pass an implementing bill prior to the 2000 elections.

It is recommended that the substance of the Senate bill from 1999 be reviewed for consideration as a committee bill by the Senate Committee on Ethics and Elections during the 2000 Legislative Session.

### BACKGROUND

In 1998, the voters of Florida adopted Constitutional Revision 11 relating to various elections provisions. The amendment became effective on January 5, 1999. Part of the revision specified:

If all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary elections for that office.

During the 1999 Legislative Session, bills to implement this constitutional provision were introduced in both the Senate and the House. Neither bill passed the Legislature.

### METHODOLOGY

Information from the Constitution Revision Commission was reviewed for the purpose of obtaining background information concerning the proposal. Additionally,

information relating to the House and Senate bills considered during the 1999 Legislative Session was reviewed.

### FINDINGS

Florida's Constitution Revision Commission held a series of public hearings throughout the state to obtain input from the citizens regarding changes to Florida's Constitution. During the public hearing process, the Commission heard from a number of interested citizens who were concerned about Florida's primary election system.

Section 101.021, F.S., prohibits a voter from voting in a primary election for any candidate running for nomination from a political party other than the party in which such voter is registered. Therefore, in instances where only one major political party has candidates who have qualified for an office and there is no general election opposition, only the voters in that political party are eligible to vote. Voters registered as members of the other major party or of a minor party and voters registered with no party affiliation do not get the opportunity to choose the eventual officeholder. Prior to the constitutional amendment, Florida was one of only 18 states with a completely closed primary system.

During the 1999 Legislative Session, bills were introduced in both the Senate and the House of Representatives to implement the provisions of the constitutional amendment. Senate Bill 710 provided that if all candidates for an office were seeking the nomination of the same political party and there would otherwise be no opposition in the general election *except from a write-in candidate*, all voters would be allowed to vote for that office in the first primary and, if necessary, the general election. The names of "universal primary" candidates would be grouped together on a separate portion of the ballot or on a separate ballot under the heading "Universal Primary." Any registered voter would be allowed to vote in the universal primary election contests. If any candidate received a majority

of the votes in the universal primary and no write-in candidate had qualified, the candidate receiving a majority would not have his or her name on any other ballot. If a write-in candidate had qualified, the name of the candidate receiving a majority in the universal primary would have his or her name on the general election ballot, along with a space for the write-in candidate to have his or her name written in. If no candidate received a majority of the votes in the universal primary, the names of the two persons receiving the highest number of votes would have their names placed on the general election ballot, along with a space for a write-in candidate, if one had qualified.

Committee Substitute for House Bill 1465 also provided for a universal primary, but with one important difference. The House bill provided that a write-in candidate was considered general election opposition. Therefore, if all candidates for an office were of the same political party and there was no write-in candidate, all voters would be allowed to vote for that office. However, if a write-in candidate had qualified for the office, the primary would remain closed and only voters who were registered in the political party could vote.

During consideration of SB 710 by the Senate Ethics and Elections Committee, the members of the committee expressed serious concerns that any person or group could field a "sham" write-in candidate for the purpose of closing the primary election to party voters only. The Senate members felt that this would thwart the will of the voters who favored the amendment to the Constitution.

In January 1999, Governor Bush called four special elections to fill vacancies in legislative offices. Since the Legislature had not convened in Session to implement

the constitutional amendment relating to elections, Governor Bush issued an executive order setting forth the procedures to be followed during the election, based upon the terms of the constitutional amendment. The portion of Executive Order 99-8 which related to the primary election issue read:

If all candidates for the offices to be filled in any of the special elections have the same party affiliation and the special primary election winner will have no opposition in the special general election, all qualified voters, regardless of party affiliation, may vote in the special primary election for that office.

During the special elections, each of the contested seats had candidates from each of the major parties and a candidate from a minor party. Therefore, the "modified open" primary election was not used in the 1999 special elections.

There are a number of competing policies to be considered in implementing this provision of the constitutional amendment. Should the Legislature fail to pass an implementing bill during the 2000 Legislative Session, these policy issues will be determined by the executive branch or the judicial branch prior to the 2000 elections.

**RECOMMENDATIONS**

It is recommended that the substance of the 1999 Senate bill (SB 710) be reviewed for consideration as a committee bill during the 2000 Legislative Session.

**COMMITTEE(S) INVOLVED IN REPORT** *(Contact first committee for more information.)*

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**MEMBER OVERSIGHT**

Senators Meek and Saunders