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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/18/08

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 190

SHORT TITLE Primary Ballot Access For Certain Candidates SB \_\_\_\_\_

ANALYST Ortiz

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB1  
Relates to HB203

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Attorney General's Office (AGO)

No Responses Received From  
Association of County Clerks  
Secretary of State

### SUMMARY

#### Synopsis of Bill

House Bill 190 provides for a statutory alternative to placing a candidate's name on the primary election ballot if a candidate does not receive the "preprimary convention designation." Currently, a candidate will appear on the primary election ballot only if he or she receives a preprimary convention designation by receiving at least 20 percent of the votes of the elected delegates at the preprimary convention. Senate Bill 1 will allow a candidate to collect additional signatures to total at least four percent of the total vote of the candidate's party in the state or congressional district. Senate Bill 1 restores pre-2007 language found in Section 1-8-33(D) of the Election Code.

### SIGNIFICANT ISSUES

According to the AGO, there is a pending lawsuit Don Wiviott v. State of New Mexico and

Mary Herrera, Secretary of State, D-0101-CV-2008-00022 (1<sup>st</sup> Judicial District) that alleges that the Legislature's 2007 decision to delete Section 1-8-33(D) unconstitutionally abridges a candidate's access to a primary election ballot. If the Legislature adopts Senate Bill 1, then the lawsuit may be moot.

The Federal Court for the District of Connecticut has ruled that a similar statute that required a candidate to receive a preprimary convention designation (15%) was a "severe burden" on ballot access and turned away viable candidates. See Campbell v. Bysiewicz I, 213 F.Supp.2d 152 (D. Conn. 2002)/ Campbell v. Bysiewicz II, 242 F. Supp. 2d 164 (D. Conn. 2003). The Court struck down the law and the Connecticut Legislature amended the law to allow a candidate, who did not receive the 15 percent designation, to file petitions signatures (equal to 2 percent of the total state-wide party registration) to be placed on the ballot. See C.G.S.A. § 9-400 (amended through 2007). In contrast, the Massachusetts State Supreme Court upheld a two-part system where a candidate had to: (a) first obtain a certain number of signatures (from registered voters from any party) and (b) receive 15 percent of the state convention delegate vote. See Langone v. Secretary of the Commonwealth, 446 N.E. 2d. 43 (Mass. 1983). The Court found that the law was not a "severe burden" on ballot access because it allowed a political party to re-gain some control over whom it was nominating as its candidate (i.e. since any registered voter could sign the petitions—conceivably Democrats could sign petitions for a candidate who was trying to run as a Republican). (Note, New Mexico requires a person signing a candidate petition to be of the same political party as the candidate. See NMSA 1978, Section 1-8-31)

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates SB1  
Relates to HB203

## **ALTERNATIVES**

It may be possible that no candidates receive the 20 percent support and thus the party may not have an eligible candidate.

EO/mt