



**House  
Legislative  
Analysis  
Section**

House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

**CANCEL 2004 PRESIDENTIAL  
PRIMARY; ADD NEW CANDIDATE  
REQUIREMENTS FOR 2008**

**House Bill 4602 (Substitute H-1)  
First Analysis (5-7-03)**

**Sponsor: Rep. David Farhat  
Committee: Local Government and  
Urban Policy**

***THE APPARENT PROBLEM:***

During the past thirty years, Michigan’s Republican and Democratic political parties have changed the way their presidential candidates are selected from election to election. (See *BACKGROUND INFORMATION* below.)

Currently in Michigan, the Republican Party uses an open presidential primary election, set for the fourth Tuesday in February during presidential election years, at which the state’s electors vote for their preferred candidate among the Republican candidates running for the office of president. In 2004, the open presidential primary is set for February 24. In contrast, the Democratic Party uses closed party caucuses convened in each congressional district to elect its preferred candidate for the presidency. The rules of the national Democratic Party allow state Democratic parties to use either closed primaries or closed caucuses, in which electors must declare themselves to be Democrats, to select their preferred Democratic presidential aspirant. During the 2004 presidential election year, the Democratic caucuses will be held on February 7.

State elections officials monitor the national news media to identify a party’s candidates, publish a list of candidates in November before each presidential election year, and then send that list to the Republican and Democratic party chairmen who confirm the names on the list, and can, if necessary, add others. Then under provisions established in the law, the state elections officials contact the potential candidates themselves and advise them that they may, if they wish, have their names taken off the ballot. In recent presidential primary elections, all Democrats have chosen to have their names removed from the ballot. Under the law, they are required to do so by filing an affidavit before 4 p.m. on the second Friday in December before the presidential election year. [Presidential candidates may also gain access to the ballot by filing a nominating petition. See *BACKGROUND INFORMATION* below.]

In the 2004 presidential election year, the leaders of the Republican Party do not expect that the incumbent U.S. president, George W. Bush, will be challenged by any other Republican candidate. Therefore, the leaders have recommended that Michigan’s 2004 open presidential primary be cancelled for that year only. Further, some have argued that beginning with the 2008 presidential year, a person should not be able to withdraw from the presidential primary ballot without also withdrawing from the general election ballot. The proponents of this approach say that this would encourage candidates to participate in the primary, make the primary more meaningful, and offer voters the opportunity to express their preferences (even if the primary was not binding).

***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Election Law to cancel the 2004 presidential primary.

(The election law calls for a statewide presidential primary to be conducted on the fourth Tuesday in February in each presidential election year. The bill would add to this provision, “except in 2004 when no statewide presidential primary shall be conducted”. To participate in the primary, a political party must have received more than five percent of the total vote cast nationwide for the office of president in the last presidential election.)

Also under the bill, a person who was proposed as a presidential candidate could file an affidavit with the secretary of state indicating that he or she did not wish to have his or her name printed on the presidential primary or general election ballot, and the secretary of state would not have that candidate’s name printed on the presidential primary or general election ballot. (The words underlined would be added by this bill.) In order for the person’s name to not appear on the presidential primary (and general

**House Bill 4602 (5-7-03)**

election) ballot, a person would be required to file (as now) an affidavit with the secretary of state no later than 4 p.m. on the second Friday in December in the year before the presidential election year or the affidavit would be considered void.

MCL 168.613a and 168.615a

[NOTE: Senate Bill 397 which would cancel the 2004 presidential primary has been passed by the Senate Government Operations Committee, unanimously.]

### **BACKGROUND INFORMATION:**

Michigan's presidential primary history. For the past two decades, the method of selecting delegates to the presidential nominating conventions has changed from election to election.

1972 – An open primary was established, allowing a voter from any party to vote for a candidate in another party, a practice that is sometimes called ‘cross-over’ voting. Party regulars view the results of these elections with suspicion, because the winners may be the result of party members ‘crossing over’ to vote for the other party’s weakest candidate. In 1972, George Wallace won the Democratic nomination in Michigan, and many Democrats contend that Republican cross-over voting made Wallace the winner.

1980 – Before the 1980 presidential election, the National Democratic Party refused to recognize the results of open presidential primaries, and opted instead to select their delegates to the national nominating convention within district party caucuses.

1984 – Michigan Republicans decided not to use the presidential primary to select delegates.

1988 – Public Act 275 of 1988 was enacted, which created a closed presidential primary system that required voters to register their party preference before voting. This primary was roundly criticized by voters from both parties, all unaccustomed to having to declare their party affiliation before casting their votes.

1992 – Both the Republican and Democratic parties modified their procedures for the 1992 presidential primary, by party rule. The Democrats allowed electors to vote in the presidential primary only if they registered as Democrats on election day (creating a closed primary), while the Republicans allowed voters to vote in the Republican primary without a party declaration (creating an open

primary), a process enacted into law as Public Act 87 of 1995.

Other states move to eliminate the presidential primary. The move to eliminate the 2004 presidential open primary is underway in at least five states: Arizona, Kansas, Missouri, Utah, and Colorado.

Access to presidential primary ballot via nominating petition. In addition to gaining access to the ballot following the protocols established for the Republican and Democratic parties, a presidential candidate can have his or her name placed on the ballot as a Republican or Democrat or representing a minor party, by submitting a nominating petition to state election officials. The petition must be filed no later than the second Friday in December before the presidential election year, and contain valid signatures of registered voters equal to at least one-half of one percent of the total votes cast in the state at the previous presidential election for the presidential candidate of the political party for which the individual is seeking nomination. The total number of signatures is also capped, and the signatures must be collected no earlier than October 1.

### **FISCAL IMPLICATIONS:**

According to the Senate Fiscal Agency, the elimination of the presidential primary election would save about \$7 million. (SFA analysis of Senate Bill 397 dated 5-1-03)

### **ARGUMENTS:**

#### **For:**

Only the Republican Party uses Michigan’s open presidential primary to select its preferred presidential candidate, and during the coming presidential election year the incumbent president, George W. Bush, is not expected to be challenged. Since the election is uncontested, it can and should be canceled in order to save the state money. The state reimburses local units of government *after* local election officials conduct the election. The last presidential primary in 2000 cost the state about \$6.3 million to run. It is expected that the 2004 presidential primary would cost the state about \$7 million. In order to save local units of government the up-front costs of the election, and also save the state from having to reimburse those costs, the presidential primary should be eliminated.

**For:**

In order to establish a presidential candidate's eligibility to participate in Michigan's presidential primary, a political party must have received more than five percent of the total vote cast nationwide for the office of president in the last presidential election. The 2004 presidential primary is not needed, because no minor political party qualified in the 2000 presidential election year by garnering more than five percent of the vote. (The top minor party vote-getter was the Green Party, whose presidential candidate Ralph Nader received 2.74 percent of the votes cast.)

**For:**

The bill was amended in committee to provide that beginning with the presidential election in 2008, a candidate could only have his or her name withdrawn from the presidential primary ballot if he or she did not want to be on the general election ballot as a presidential candidate. Presidential primary elections should raise the visibility of *all* major party candidates, and they should be open primaries, so that no elector is required to indicate his party affiliation in order to vote for the candidate of his or her choice.

**Against:**

The committee amendment would appear to require presidential candidates who are Democrats to participate in the open presidential primary on the fourth Tuesday in February of each presidential election year, despite their national party rules which require that the Democratic delegates to the national conventions who will nominate the party's presidential candidate be selected in closed primaries or closed caucuses (so that electors can declare their party affiliation). Historically, the manner in which delegates are selected is a matter of state election law. However, when party rules conflict with state law, generally courts rule that national party rules take precedence.

**Response:**

The bill does not require a party to use the open presidential primary in Michigan as part of its process of nominating its eventual presidential candidate, so it does not conflict with party rules. It would have the effect of making candidates participate in a non-binding open primary in which voters would be free to express their preferences from a list of generally accepted candidates for a party's presidential nomination. This would make the primary worthwhile, raise public consciousness of issues and candidates, and encourage voter involvement. It would discourage a person who really did consider himself or herself a potential

candidate for president at the time the secretary of state's list was compiled from withdrawing from the primary. (Note that the bill would not affect a person who decided to become a candidate after that date.)

**Against:**

A spokesman for Common Cause of Michigan has noted that primary elections are a good experience for voters. They make the coming presidential race more visible to the public. To stay in the habit of voting, and to be part of the county's ongoing political discourse about public problems—indeed, to be a vital part of the solution to those problems, rather than a part of the problem, itself—can only be accomplished in a free and democratic government whose leaders are selected by the people in a robust cycle of systematic elections. That way, voters always have a choice and a voice. Canceling the primary runs counter to that.

**POSITIONS:**

The Office of the Secretary of State supports the bill as introduced. (5-6-03)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.