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BILL ANALYSIS



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Senate Bill 624 (as enacted)
Sponsor: Senator Michelle A. McManus
Senate Committee: Campaign and Election Oversight
House Committee: Ethics and Elections

PUBLIC ACT 52 of 2007

Date Completed: 9-11-07

RATIONALE

Candidates for U.S. President are nominated by delegates to a political party's national convention. Delegates are selected within each state and support a particular candidate. The way delegates are chosen is typically a matter dealt with in state election law, but national party rules take precedence when they conflict with state law. In recent elections, Republicans selected their delegates in the Michigan presidential primary, which under previous statute was an "open" primary (one in which any elector may vote). Democrats used a caucus system to select delegates, as an open primary is contrary to national Democratic Party rules. (While a presidential primary is governed by State law and paid for by the State, a caucus is run according to political party rules and is paid for by the party.) Under the Michigan Election Law, a statewide presidential primary election was required to be held on the fourth Tuesday in February of each presidential election year. This meant that a statewide presidential primary was scheduled for February 26, 2008.

Some people considered Michigan's presidential primary problematic for two reasons. First, as noted above, national Democratic Party rules prohibit state Democratic parties from participating in open primaries. Second, many people believed that February 26 would be too late in the national primary season to give Michigan voters enough input on the presidential nominating process in 2008. Because a growing number of states are moving their primaries to early in the year, many to February 5 or before, there were

concerns that Michigan's potential influence on the process would diminish.

In order to increase Michigan voters' influence in choosing the candidates for the 2008 presidential election, and to include both major political parties, some suggested that Michigan hold a statewide closed presidential primary on January 15, 2008.

CONTENT**The bill amended the Michigan Election Law to do the following:**

- **Require a statewide presidential primary on January 15, 2008, unless all of the participating political parties will be using another method to select their delegates.**
- **Require an elector to select a participating political party ballot he or she wishes to vote.**
- **Require the Secretary of State to prescribe procedures to ascertain an absent voter's ballot selection, and to safeguard confidentiality of the selection.**
- **Allow a participating political party to use the elector ballot selection records only to support political party activities, and prescribe a misdemeanor penalty for a violation.**
- **Change the February regular election date in 2008 to coincide with a presidential primary.**
- **Require a party to have received at least 25% of the total vote cast in the State, rather than 5% of the total vote cast in the nation, for the office of President in the last presidential**

election in order to participate in a statewide presidential primary.

- Delete a requirement that the State compensate cities and townships for processing electors' designations of political party preference.**
- Repeal provisions pertaining to the selection of delegates to a State or national convention.**

The bill took effect on September 5, 2007.

Presidential Primary Date

The bill requires a presidential primary to be conducted on January 15, 2008, unless the Secretary of State cancels it because all participating political parties will be using another method to select their delegates (as described below). A presidential primary must be held on the fourth Tuesday in February in each following presidential election year.

Under the bill, by 4 p.m. on November 14, 2007, the chairperson of each participating political party must notify the Secretary of State if his or her party will be using a method other than the results of the January 15, 2008, presidential primary to select delegates to his or her respective national convention to nominate a candidate for President of the United States in 2008. At 4 p.m. on November 15, 2007, the Secretary of State must determine, based on the information provided by the participating political parties, whether the participating political parties in Michigan will be using a method other than the results of the January 15, 2008, presidential primary to select delegates to their respective national conventions to nominate a candidate for President of the United States in 2008. If he or she determines that all participating political parties will be using a method other than the presidential primary, the Secretary of State must cancel the presidential primary that otherwise would be held on January 15, 2008, and any ballots for that presidential primary must be destroyed. Upon request, the chairpersons of the participating political parties must provide the Secretary of State with the information necessary for him or her to make this determination.

The bill defines "participating political party" as a political party authorized to participate in a presidential primary under the Law.

"Presidential election year" means a calendar year in which the number of the year is a multiple of four. "Presidential primary" means a statewide primary election held for participating political parties in each presidential year under the Law.

Participating Political Parties

Previously, a political party that received less than 5% of the total vote cast nationwide for the office of President in the last presidential election could not participate in the statewide presidential primary election. The bill increased the percentage to 20% and refers to the total vote cast in this State, rather than nationwide, for the office of President in the last election.

The bill specifies that nothing in Section 613a or Sections 614a to 616a may be interpreted to diminish or impair the State and Federal constitutional rights of a participating political party or give the State, its political subdivisions and agencies, or its courts jurisdiction or authority over the application or interpretation by a participating political party of the party's State or national rules, regulations, policies, and procedures. Each party is the sole and exclusive arbiter of the application and interpretation of its State and national rules, regulations, policies, and procedures. (Sections 613a and 614a to 616a pertain to the primary date, the cancellation of the 2008 primary, the delegate selection process, lists of candidates, presidential primary ballots, voters' primary selections, and the canvassing and certification of statewide and congressional district results.)

Ballot Selection; Records

Under the bill, in order to vote at a presidential primary, an elector must indicate in writing, on a form prescribed by the Secretary of State, which participating political party ballot he or she wishes to vote when appearing to vote at a presidential primary. In fulfilling these requirements, the Secretary of State must prescribe procedures intended to protect or safeguard the confidentiality of the participating political party ballot selected by an elector.

An elector may not be challenged at a presidential primary based solely upon the participating political party ballot he or she

selected. An elector may be challenged only to the extent authorized under Section 727. (Under Section 727, an election inspector must challenge an applicant for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant's name in the registration book. A registered elector of the precinct present in the polling place may challenge the right of anyone attempting to vote if the elector knows or has good reason to suspect that the individual is not a registered elector in that precinct. An election inspector or other qualified challenger also may challenge the right of an individual attempting to vote who has previously applied for an absent voter ballot and who on election day is claiming to have never received the absent voter ballot or to have lost or destroyed it.)

Except as otherwise provided in the bill, the information acquired or in the possession of a public body indicating which participating political party primary ballot an elector selected is confidential and exempt from disclosure under the Freedom of Information Act, and may not be disclosed to any person for any reason.

The bill requires the Secretary of State to develop a procedure for city and township clerks to use when keeping a separate record at a presidential primary election that contains the printed name, address, and qualified voter file number of each elector and the participating political party primary ballot selected by that elector.

To ensure compliance with the State and national political party rules of each participating political party and with these provisions, the Secretary of State also must provide to the chairperson of each participating political party a file of these records, within 71 days after the presidential primary. The Secretary of State must set a schedule for county, city, and township clerks to submit the required data or documents. Immediately after the 22-month Federal election records retention period expires, the Secretary of State and local clerks must destroy the recorded information indicating which presidential primary ballot each elector selected.

Except as described below, a participating political party may not use the information

indicating which presidential primary ballot each elector selected for any purpose, including a commercial purpose, and may not release the information to any other person, organization, or vendor.

A participating political party may use the information transmitted under these provisions only to support political party activities by that participating political party, including support for or opposition to candidates and ballot proposals. A party may release the information to another person, organization, or vendor for the purpose of supporting political party activities, including support for or opposition to candidates or ballot proposals.

A participating political party that releases the information to another person, organization, or vendor as authorized must enter into a contract with the person, organization, or vendor. The participating political party must retain the contract for six years from the effective date of the contract or any amendment to it. The contract must do all of the following:

- State the information use restrictions imposed by the bill.
- Specify how and when the information will be used.
- Prohibit the donation, use, or sale of the information for any purpose other than a purpose authorized under the bill.
- Prohibit the retention of the information after authorized use.
- Describe the criminal penalties provided for misuse.

Any person who uses the information indicating which participating political party primary ballot an elector selected for an unauthorized purpose is guilty of a misdemeanor punishable by a fine of \$1,000 for each voter record that is improperly used or imprisonment for up to 93 days, or both.

Absent Voter Party Selection

Under the bill, for a presidential primary, the Secretary of State must prescribe procedures for contacting an elector who is a member of the Armed Services or an overseas voter, as described in the Law, and who is eligible to receive an absent voter ballot or who applies for an absent voter ballot for the presidential primary, offering the elector the opportunity to select a

participating political party ballot for the presidential primary. The Secretary of State also must prescribe procedures to protect or safeguard the confidentiality of the elector's party ballot selection.

Additionally, the Secretary of State must revise the absent voter ballot application form or provide a separate form to require that a presidential primary elector indicate a participating political party ballot selection when requesting an absent voter ballot, and prescribe procedures to protect or safeguard the confidentiality of an elector's participating political party ballot selection on an absent voter ballot application.

Regular Election Dates

Except as otherwise provided, an election held under the Law must be held on one of the following regular election dates:

- The February regular election date, which is the fourth Tuesday in February.
- The May regular election date, which is the first Tuesday after the first Monday in May.
- The August regular election date, which is the first Tuesday after the first Monday in August.
- The November regular election date, which is the first Tuesday after the first Monday in November.

Under the bill, in 2008 only, the February regular election date instead will be January 15, 2008, if a presidential primary is held on January 15.

Candidates

Lists. Previously, by 4 p.m. of the second Friday in November of the year before the presidential election, the Secretary of State had to issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each party's nomination by the political parties for which a presidential primary election would be held. The bill deleted this provision.

Under the bill, by 4 p.m. on the 18th Tuesday before the presidential primary, the State chairperson of each participating political party must file with the Secretary of State a list of individuals whom the chairperson considers to be potential

presidential candidates for that political party in the next presidential election year. Previously, a State chairperson had to file a list of potential candidates by 4 p.m. on the Tuesday following the second Friday in November of the year before the presidential election.

Under the bill, in compiling the list of individuals to be filed with the Secretary of State, the chairperson of each participating political party must consider all of the following:

- References to an individual as a candidate for nomination by the participating political party for the Office of the President of the United States in state and national news media, including the internet.
- Presidential campaign activity by the individual or his or her campaign organization in Michigan and nationally.
- Support for the individual as a candidate for President of the United States by the general public and by members of the party in Michigan and nationally.

The bill requires The Secretary of State to make the lists available to the public on an internet website maintained by the Department of State.

As previously required, after receiving the list of candidates from the State chairperson of each political party, the Secretary of State must notify each potential presidential candidate of the provisions of the Law relating to the presidential primary.

Ballots. The bill requires the Secretary of State to prescribe the form of the official presidential primary ballot for each participating political party. As previously required, except as otherwise provided in the Law, the Secretary of State must have the name of a presidential candidate printed on the appropriate presidential primary ballot for that participating political party. A presidential candidate may file an affidavit indicating his or her party preference if different than the party preference contained in the notification from the Secretary of State, and the Secretary of State must have the candidate's name printed on the appropriate presidential primary ballot for the participating political party.

Under the bill, if the affidavit of a presidential candidate indicates that he or she has no political party preference or indicates a political party preference for a political party other than a participating political party, the Secretary of State may not have that candidate's name printed on a ballot for the presidential primary. As previously allowed, a candidate may file an affidavit indicating that he or she does not wish to have his or her name printed on the presidential primary ballot and the Secretary of State may not have that candidate's name printed on the ballot.

Under the bill, a presidential candidate must file an affidavit described above with the Secretary of State by 4 p.m. on the 14th Tuesday before the presidential primary or the affidavit will be considered void. The previous deadline was 4 p.m. on the second Friday in December of the year before the presidential election year.

Under the bill, the name of an individual who is not listed with the Secretary of State by the State chairperson as a potential presidential candidate must be printed on the ballot for the presidential primary if he or she files a nominating petition with the Secretary of State by 4 p.m. on the 12th Tuesday before the presidential primary election. Previously, the deadline was 4 p.m. on the second Friday in December of the year before the presidential election year.

Under the bill, a signature on a nominating petition is not valid if obtained before August 15 of the year before the presidential election year in which the individual seeks nomination. The Law previously referred to October 1.

The Law requires the names of the presidential candidates under each political party heading to be rotated on the ballot. Under the bill, the names on each ballot must be rotated by precinct, and ballots for each participating political party must be printed on paper of the same color.

Release of Ballots

The Law requires the Board of State Canvassers to canvass the returns received from the boards of county canvassers and certify the statewide congressional district

results of the presidential primary to the Secretary of State.

Previously, after the canvass by the Board of State Canvassers, the Secretary of State could authorize the immediate release of all ballots, ballot boxes, voting machines, and equipment used in each precinct of a city that conducted a city election in the first week of April if the county clerk certified both of the following:

- No defect in or mechanical malfunction or a voting machine, voting device, ballot, or other election equipment or material was discovered or alleged before the date of the completion of the State canvass.
- No other election for offices or questions appeared on the same election equipment used in the precinct for the presidential primary election.

The bill deleted these provisions.

Reimbursement

The Law requires the State to reimburse each county, city, and township for the cost of conducting a presidential primary. The reimbursement may not exceed the verified account of actual costs.

Under the bill, the State must reimburse each county, city, and township only if the presidential primary is not cancelled by the Secretary of State.

Previously, the State had to compensate each city and township for the processing of voter identification cards required for the sole purpose of changing or adding an elector's designation of a political party preference or no political party preference. Compensation could not be paid for the processing of voter identification cards required for original voter registration applications or applications changing an elector's address. The Secretary of State was required to distribute appropriated funds equitably to implement this requirement upon receiving an annual verified account of actual costs from each city and township. The bill deleted these provisions.

Repealed Sections

The bill repealed Sections 495a, 562b, 613c, 618, 619, and 620a of the Law, which are described below.

Section 495a. If an elector declared a party preference or no party preference as provided under the Law for the purpose of voting in a statewide presidential primary election, a clerk could remove that declaration from the precinct registration file and the master registration file of that elector and the precinct registration list, if applicable.

A person making a request under the Freedom of Information Act was not entitled to receive a copy of a portion of a voter registration record that contained a declaration of party preference or no party preference of an elector. A clerk or any other person could not release a copy of a portion of a voter registration record that contained a declaration of party preference or no party preference of an elector.

Section 562b. Before an individual could be elected as a delegate to the State or national convention of a political party, that individual had to sign an affidavit including one of the following:

- The name of a candidate for President of the United States of that individual's political party that he or she was bound to vote for at each stage of the nominating process until the end of the first ballot at the national convention of that political party unless otherwise released from that commitment.
- A statement that the individual was uncommitted regarding the candidates for President of the United States.

An individual elected as a delegate to the State or national convention of a political party was bound to vote at each stage of the presidential nomination process until the end of the first ballot at the national convention of that political party for the candidate for President that he or she designated a commitment to by written affidavit, if any, before his or her election.

A delegate to the State or national convention was bound to vote for the presidential candidate the delegate was committed to unless the delegate was

released from that commitment by written notice to the chairperson of the State central committee by the candidate or the candidate publicly withdrew from contention for that party's nomination.

An individual seeking election as a delegate to the State convention, or his or her designee, had to file the affidavit with the county chairperson or the chairperson of the district committee. The county or district committee chairperson had to file a copy of that affidavit with the chairperson of the State central committee. An individual who had not filed an affidavit and who was seeking election as a delegate to the national convention, or his or her designee, had to file the affidavit with the chairperson of the State central committee.

Section 613c. If two cities and a village were to be consolidated as a new city in 2000 and the new city was scheduled to elect officers on March 7, 2000, the governing body of any of the local units that were to be consolidated could, by resolution adopted before January 14, 2000, cancel an election of officers of that local unit.

Section 618. The allocation of all delegates and alternates to a national convention had to be made by the State central committee of each party. All delegates had to be registered electors of the State. Delegates elected from congressional districts had to be registered electors of those districts. All national convention delegates had to be chosen according to procedures and any other qualifications established by the State central committee of that political party.

Section 619. National convention delegates elected under the Law had to be elected on a basis that ensured that the proportion of the total national convention delegation that was uncommitted or was committed to each presidential candidate equaled, as near as practicable, the proportion of the popular vote that was cast as uncommitted or for each respective presidential candidate of the particular political party's total popular vote at the presidential primary election.

Before an individual could be elected as a delegate to the national convention of a political party, he or she had to file the required affidavit. If the individual named a presidential candidate in the affidavit, he or she also had to be certified by the

presidential candidate or the candidate's designee as a delegate committed to that candidate. A national convention delegate was bound to vote for the presidential candidate for whom he or she designated commitment, if any, and as certified by the candidate or the candidate's designee before the delegate was elected as a national delegate until the end of the first ballot at the national convention. A national convention delegate was released from that commitment by the withdrawal of that presidential candidate from contention for that party's nomination or by written release of the candidate to the chairperson of the national convention.

A person who was a delegate at large to a State convention of his or her political party only by virtue of being a member of the State Legislature could not participate in the selection of delegates to his or her political party's national convention.

Section 620a. For purposes of the Law, a State political party had to follow State law pertaining to the selection of delegates if required to follow State law by a State or national political party rule. If there was no such State or national political party rule, a requirement of the Law pertaining to the selection of delegates applicable after the election of delegates to the county convention did not apply to a political party if that requirement conflicted with a rule of that party.

MCL 168.613a et al.

BACKGROUND

Michigan held statewide open presidential primaries from 1916 to 1928; provisions for a presidential primary were repealed in 1931. In 1972, provisions were inserted in the Michigan Election Law to establish an open primary. While electors could vote only for the candidates of one party, they did not need to be registered members of that party in order to do so. This led to the possibility that members of one party could temporarily "cross over" to cast votes for another party's candidates, so the winners might not be the most popular choices among their own party members. Before the 1980 presidential election, the national Democratic Party adopted a rule preventing its members from recognizing the results of open presidential primaries in selecting

delegates to the national nominating convention. Michigan Republicans then decided not to use the presidential primary as a means of selecting delegates in 1984. As a result of these actions, amendments to the Michigan Election Law in 1983 eliminated the presidential primary.

Public Act 275 of 1988 then amended the Election Law to establish a closed presidential primary system that required voters to register their party preference before voting. Dissatisfaction with this method inspired both parties to modify their procedures for the 1992 primary by rule. The Democrats allowed electors to vote in the Democratic primary if they registered as Democrats on election day; the Republicans allowed people to vote in the Republican primary without making a party declaration. Subsequently, Public Act 87 of 1995 removed the statutory requirement that a voter declare a party preference, and thus returned the presidential primary to an open primary.

In 2003, concerns were raised about the cost of holding a presidential primary election. Since only the Republican Party would be participating, due to the Democrats' rule against open primaries, and it was widely believed that President George W. Bush was not likely to have any viable opposition in the primary, Public Act 13 of 2003 amended the Election Law to eliminate the primary in 2004, and both parties ran their own nominating processes.

Regardless of the different methods used to select delegates, both parties traditionally have adhered to the date of the Michigan presidential primary prescribed in the Election Law. The primary was held early in April between 1916 and 1928, and during the third week of May from 1972 to 1980. Subsequently, the date was changed to the third Tuesday in March. To allow voters to make their choice earlier in the nominating process, Public Acts 71 and 72 of 1999 advanced the date to the fourth Tuesday in February.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill will increase the influence of Michigan voters on the national nominating process. As more and more states move their primaries to February 5 and earlier, candidates will spend less money and time in Michigan. According to the National Conference of State Legislatures, at least 32 states will hold primaries or caucuses before the end of February; these include 16 states that will hold primaries or caucuses on February 5 alone. By holding both the Republican and the Democratic primaries on January 15, Michigan will have a greater presence during the 2008 national primary season and garner more attention from candidates. This will encourage them to focus on issues relevant to Michigan, including manufacturing, agriculture, water use, and the environment. In addition, an early primary will pump millions of dollars into the State's economy in the form of television and radio ads, debates, and multiple visits from candidates and staff.

Response: Moving the primary to January 15 evidently violates the rules of both parties. In fact, according to news reports, the Democratic National Committee recently voted to strip Florida of all of its delegates to the 2008 Democratic National Convention for scheduling a January 29 presidential primary. If delegates nominated in Michigan are not recognized, or candidates refuse to campaign in this State, Michigan will have less influence, not more.

Supporting Argument

Michigan should hold a closed statewide presidential primary in order to increase voter participation in the nominating process. Some have predicted that more Michigan voters will participate in a joint statewide closed primary election than would participate in a Democratic caucus and Republican State convention. Some estimate that approximately 100,000 Michigan voters would participate in the Democratic caucus, approximately 10,000 would participate in the Republican convention, and at least 2 million will participate in a statewide primary. These projections are based on the results of previous Michigan primaries and the nature of the 2008 presidential race. Over 1 million voters participated in the 1992 primary, the most recent two-party closed presidential primary in Michigan. In 1972 and 1976, respectively, 1.9 million and 1.7 million voters participated. The 2008 election will

be the first time since 1928 that neither an incumbent President nor a Vice President will be in the running for the presidential nomination, making 2008 an opportune time to increase voter turnout in a statewide primary.

Opposing Argument

A voter should not have to declare his or her party affiliation in order to vote in a presidential primary election. Many voters oppose the idea of closed primaries because they desire to keep their political beliefs private and because closed primaries discourage independent voters. In a previous closed presidential primary, Michigan county clerks evidently had difficulty dealing with voters who did not wish to be affiliated with a party but wanted to participate in the primary election. Voters' anger apparently was directed to poll workers who were required to explain and enforce the closed primary and subsequently turn voters away. In addition, the lists will be turned over to the political parties, which may use the names for virtually any political activity, as long as it is not a commercial purpose. Contrary to what the bill allows, protecting the privacy and wishes of Michigan voters should be among the most important considerations of a statewide primary.

Response: Under the bill, a voter will not have to join a political party or declare that he or she is a Democrat or a Republican; he or she will be required only to indicate the participating political party ballot he or she wants to vote. Records of voters' selections will be given to each party but will be exempt from disclosure under the Freedom of Information Act.

The bill also coincides with national Democratic Party rules. In order to combat cross-party voting, the Democratic Party does not recognize the results of open state primaries. As a result, although both parties may participate in a statewide, State-run primary, the Democratic Party has not participated in Michigan's presidential primary since 1992.

Opposing Argument

Michigan cannot afford to hold a statewide presidential primary. When the State is facing a budget deficit of approximately \$1.7 billion, tax revenue should not be spent on new or unnecessary programs and causes. With estimated costs of \$10 million, a State-

run statewide presidential primary will create more financial trouble for Michigan. Additionally, because of the partisan nature of closed primaries, taxpayers who identify as independent voters will be required to fund a nominating process from which they essentially will be excluded.

Response: The bill moves the February 2008 regular election to the date of the primary, minimizing additional costs. Since a joint primary will bring national attention to Michigan, focusing candidates on the needs of the State, the benefit will be worth the additional cost.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

There will be an indeterminate cost associated with changing the date of the 2008 presidential primary. If more than one party participates in the primary, the voter turnout might be larger, thus increasing the cost of the election. There also might be minimal costs associated with the Secretary of State's ascertaining each absent voter's party ballot selection for the primary election.

The creation of a new misdemeanor will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of misusing the information indicating which presidential primary ballot an elector requested. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Joe Carrasco
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.