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BILL ANALYSIS



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Senate Bill 625 (as reported without amendment)
Sponsor: Senator Cameron S. Brown
Committee: Campaign and Election Oversight

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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 current statute is 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 is required to be held on the fourth Tuesday in February of each presidential election year. This means that a statewide presidential primary is scheduled for February 26, 2008.

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

In order to increase Michigan voters' influence in choosing the candidates for the 2008 presidential election and subsequent elections, and to include both major political parties, some have suggested that Michigan hold a statewide closed presidential primary early in February in each presidential election year.

CONTENT

The bill would amend the Michigan Election Law to do the following:

- **Require a statewide presidential primary election on the first, rather than the fourth, Tuesday in February in each presidential election year.**
- **Require an elector to indicate in which political party primary he or she wished to vote.**
- **Require the Secretary of State to prescribe procedures to ascertain an absent voter's party selection, and to ensure confidentiality of the selection.**
- **Prohibit a political party from using the elector party selection records except as provided in the bill, and prescribe a misdemeanor penalty for a violation.**
- **Change the February regular election date to coincide with a statewide presidential primary election.**
- **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 election.**

- **Authorize the State chairpersons of participating political parties to change the primary date or cancel the primary under certain conditions.**
- **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.**

Participating Political Parties

Currently, a political party that received less than 5% of the total vote cast nationwide for the office of President in the last presidential election may not participate in the statewide presidential primary election. The bill would increase the percentage to 25% and refer to the total vote cast statewide, rather than nationwide, for the office of President in the last election.

The bill specifies that the delegate selection process after the statewide presidential primary election would have to comply with the State and national political party rules, regulations, policies, and procedures of each participating political party. Each party would be the sole and exclusive arbiter of the applicability and interpretation of its State and national rules, regulations, policies, and procedures. None of the provisions regarding the primary date, the cancellation of the primary, or the delegate selection process could be applied in a manner that diminished or impaired the State and Federal constitutional rights of a participating political party or gave the State, its political subdivisions and agencies, or its courts jurisdiction or authority over the applicability or interpretation of a participating political party's State or national rules, regulations, policies, and procedures.

Changing & Canceling the Primary

As provided in the bill, the chairpersons of the participating political parties could change the date of the statewide presidential primary election. In order to change the date, each party chairperson would have to file an affidavit with the Secretary of State by 4 p.m. on September 15 of the year before the presidential election year recommending the same date on which the primary election would be

conducted. The recommended date would have to fall on a Tuesday and could not be earlier than the second Tuesday in January or later than the fourth Tuesday in February of the presidential election year. The presidential primary election date could not be changed unless each chairperson recommended the same date.

The chairpersons also could agree to cancel the statewide presidential primary election. In order to cancel the primary election, each chairperson would have to file with the Secretary of State, by 4 p.m. on the September 15 of the year before the presidential election year, an affidavit recommending the cancellation of the primary election. The primary election could not be canceled unless each chairperson agreed to cancel it.

Primary Selection; Records

Under the bill, in order to vote at a statewide presidential primary election, an elector would have to indicate, in a manner prescribed by the Secretary of State, in which political party primary he or she wished to vote. An elector could not be challenged at a statewide presidential primary election based solely upon the political party's primary in which he or she chose to vote.

Except as otherwise provided under the bill, the information acquired or in the possession of a public body indicating the political party primary an elector chose to vote in during a statewide presidential primary would be confidential and exempt from disclosure under the Freedom of Information Act, and could not be disclosed to any person for any reason.

The Secretary of State would have to develop a procedure for city and township clerks to use when keeping a separate record at a statewide presidential primary election that contained the printed name, address, and qualified voter file number of each elector and the political party primary in which he or she chose to vote.

To ensure compliance with the State and national political party rules of each participating political party, the Secretary of State would have to provide to the chairperson of each participating political party a file of these records, within 70 days

after a presidential primary election. The Secretary of State could 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 expired, the Secretary of State and local clerks would have to destroy the recorded information indicating which presidential primary ballot each elector requested.

Except as described below, a participating political party could not use the information indicating which presidential primary ballot each elector requested for any purpose, including a commercial purpose, and could not release the information to any other person, organization, or vendor.

A participating political party could use the information created under these provisions only to support candidates and ballot proposals endorsed by the political party. A party could release the information to another person, organization, or vendor for the purpose of supporting that political party's endorsed candidates and ballot proposals. These provisions would not permit a participating political party to use the information related to voters in another political party to support or oppose candidates or ballot questions.

A participating political party that released the information to another person, organization, or vendor would have to enter into a contract with the person, organization, or vendor. The participating political party would have to retain the contract for six years. The contract would have to do all of the following:

- State the information use restrictions.
- Specify how and when the information would be used.
- Prohibit the use for any other purpose.
- Prohibit the retention of the information.

Any person who used the information indicating which presidential primary ballot an elector requested for a purpose not specified above would be guilty of a misdemeanor punishable by a fine of \$1,000 for each voter record that was improperly used or imprisonment for up to 93 days, or both.

Absent Voter Party Selection

For a presidential primary election to be held, the Secretary of State would have to prescribe procedures for contacting an elector who was registered or who registered as an absent voter to ascertain his or her party ballot selection for the presidential primary election. The Secretary of State would have to prescribe procedures to ensure confidentiality of the elector's party ballot selection.

Additionally, the Secretary of State would have to revise the absent voter ballot application form or provide a separate form to require that a presidential primary elector indicate a party ballot selection, and prescribe procedures to ensure confidentiality of an elector's party ballot selection.

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, the February regular election date would be replaced in each presidential election year by the statewide presidential primary election date if the statewide presidential primary election occurred between the second Tuesday in January and the third Tuesday in February of the presidential election year.

Candidates

Lists. Currently, by 4 p.m. of the second Friday in November of the year before the presidential election, the Secretary of State must 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 will be held. The bill would delete this provision.

By 4 p.m. on the Tuesday following the second Friday in November of the year before the presidential primary, the State chairperson of each political party for which a presidential primary election will be held must file with the Secretary of State a list of individuals whom the chairperson considers to be potential presidential candidates for that political party. After receiving the names 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 election. The bill would refer to the fourth Tuesday in September instead of the Tuesday following the second Friday in November.

Ballots. Except as otherwise provided in the Law, the Secretary of State must have the name of a presidential candidate printed on the presidential primary ballot under the appropriate political party heading. 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 under the appropriate party heading on the presidential primary ballot. 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 would have to file an affidavit described above with the Secretary of State by 4 p.m. on the fourth Tuesday in October of the year before the presidential primary or the affidavit would be considered void. The current deadline is the second Friday in December of the year before the presidential election year.

Under the Law, 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 under the appropriate political party heading if he or she files a nominating petition with the Secretary of State by 4 p.m. on the second

Friday in December of the year before the presidential election year. Under the bill, the date would be changed to the 12th Tuesday before the statewide presidential primary election.

Currently, a signature on a nominating petition is not valid if obtained before October 1 of the year before the presidential election year in which the individual seeks nomination. The bill would refer, instead, to August 15.

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 would have to be rotated by precinct.

Reimbursement

Under the Law, the State must 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 may 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 must equitably distribute funds appropriated to implement this requirement upon receiving an annual verified account of actual costs from each city and township. The bill would delete these provisions.

Repealed Sections

The bill would repeal Sections 562b, 618, 619, and 620a of the Law, which are described below.

Section 562b. Before an individual may be elected as a delegate to the State or national convention of a political party, that individual must 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 is 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 is 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 is 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 is bound to vote for the presidential candidate the delegate is committed to unless the delegate is released from that commitment by written notice to the chairperson of the State central committee by the candidate or the candidate publicly withdraws from contention for that party's nomination.

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

Section 618. The allocation of all delegates and alternates to a national convention must be made by the State central committee of each party. All delegates must be registered electors of the State. Delegates elected from congressional districts must be registered electors of those districts. All national convention delegates must 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 must be elected on a basis that insures that the proportion of the total national convention delegation that is uncommitted or is committed to each presidential candidate equals, 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 may be elected as a delegate to the national convention of a political party, he or she must file the required affidavit. If the individual names a presidential candidate in the affidavit, he or she also must be certified by the presidential candidate or the candidate's designee as a delegate committed to that candidate. A national convention delegate is 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 is elected as a national delegate until the end of the first ballot at the national convention. A national convention delegate is 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 is 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 may 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 must 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 is 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 does not apply to a political party if that requirement conflicts with a rule of that political 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 would 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 the first Tuesday in February, Michigan would have a greater presence during the national primary season and would garner more attention from candidates.

Response: The date and manner of presidential primaries in Michigan should be determined by the State parties and the Election Law should be amended only after an agreement has been reached. The statute can give the party primary system legal guidance but cannot bind the political parties.

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 would 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 would 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. 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 would not have to join a political party or declare that he or she was a Democrat or a Republican; he or she would be required only to indicate the primary in which he or she wanted to vote. Records of voters' selections would be given to each party but would be exempt from disclosure under the Freedom of Information Act.

The bill also would coincide with national Democratic Party rules. In order to combat cross-party voting, the Democratic Party does not recognize the results of closed 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 and unnecessary programs and causes. With estimated costs of \$10 million, a State-run statewide presidential primary would create more financial trouble for Michigan. Additionally, because of the partisan nature of closed primaries, taxpayers who identify as independent voters would be required to fund a nominating process from which they would essentially be excluded.

Response: The bill would move February regular elections to the date of the

primary, minimizing additional costs. Since a joint primary would bring national attention to Michigan, focusing candidates on the needs of the State, the benefit would be worth the additional cost.

Legislative Analyst: Craig Laurie

FISCAL IMPACT

There could be an indeterminate cost associated with changing the date of the presidential primary. If more than one party held a primary election, the voter turnout could be larger, thus increasing the cost of the election. There also could 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 would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of misusing the information indicating which presidential primary ballot an elector requested. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Joe Carrasco
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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.