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BILL ANALYSIS

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Senate Bill 625 (as introduced 6-27-07)  
Sponsor: Senator Cameron S. Brown  
Committee: Campaign and Election Oversight

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### **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.**
- **Change the February regular election date to coincide with a statewide presidential primary election.**
- **Require a party to receive 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.**
- **Require the State chairperson of each participating political party to file with the Secretary of State a list of individuals whom they considered to be potential presidential candidates for that party.**
- **Delete a requirement that the State compensate cities and counties for certain primary election costs.**
- **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.**

- **Repeal provisions pertaining to the selection of delegates to a State or national convention.**

#### Political Parties

Currently, a political party that receives 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 a 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 and Canceling the Primary

The chairpersons of the participating political parties could change the date of the statewide presidential primary election as provided in the bill. 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 be no earlier than the second Tuesday in January and no later than the fourth Tuesday in February of the presidential election year. The 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 an affidavit with the Secretary of State before 4 p.m. on the September 15 of the year before the presidential election year recommending the cancellation of the primary election. The primary election could not be canceled unless each chairperson agreed to cancel the election.

## 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 primary election occurred between the second Tuesday in January and the third Tuesday in February of the presidential election year.

## Ballots

Candidate 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 they consider to be potential presidential candidates for that political party. After receiving names from the State chairperson of each political party, the Secretary of State would be required to notify each potential presidential candidate of the provisions of the Act relating to the presidential primary election. Instead, the bill would refer to the fourth Tuesday in September.

Under the Law, the names of the presidential candidates under each political party heading are rotated on the ballot, and the ballot must contain a space for an elector to vote uncommitted. The bill specifies that the names would be rotated by precinct.

Affidavits. Except as otherwise provided in the Law, the Secretary of State must print the name of a presidential candidate on the presidential primary ballot under the appropriate political party heading. A presidential candidate notified by the Secretary of State may file an affidavit indicating his or her party preference if different than the party preference contained in the notification and the Secretary of State must print the candidate's name under the appropriate party heading on the presidential primary ballot. A notified 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 can not print that candidate's name 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 was considered void. The current deadline is the second Friday in December of the year before the presidential election year.

Nominating Petitions. 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 twelfth 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.

Instead, the bill would refer to August 15.

#### Elector Data

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. The process would be subject to the following provisions:

- An elector could not be challenged at a statewide presidential primary election based solely upon which political party's primary the elector chose to vote in.
- 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.
- Except as otherwise provided under the bill, the information acquired or in the possession of a public body indicating in

which political party primary an elector chose to vote during a statewide presidential primary would be confidential, exempt from disclosure under the Freedom of Information Act, and could not be disclosed to any person for any reason.

To ensure compliance with the State and national political party rules of each participating political party, the Secretary of State would have to, within 70 days after a presidential primary election, provide to the chairperson of each participating political party a file of the records described above. The Secretary of State could set a schedule for county, city, and township clerks to submit data or documents required under the bill. The Secretary of State and clerks would have to destroy the information indicating which presidential primary ballot each elector requested immediately after the expiration of the 22-month Federal election records retention period.

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. This provision 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 and 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 a maximum of 93 days, or both.

#### Reimbursement for Primary Election Costs

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.

#### 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 an elector's party ballot selection ascertained under the Law's provisions pertaining to absent voter application and registration.

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.

#### Repealed Sections

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

Sec. 562b. Under the Law, 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 as described below.
- 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 of the United States 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 chairperson or the chairperson of the district committee shall 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.

Sec. 618. Under the Law, the allocation of all delegates and alternates to a national convention must be made by the State central committee of each party. All delegates shall 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 as may be established by the state central committee of that political party. The procedures and qualifications may include guarantees that discrimination on the basis of race, creed, color, sex, age, national origin, or economic status does not occur.

Sec. 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 is 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. The determination of these proportions must include only the votes cast as uncommitted, or for a particular presidential candidate, if the total vote cast as uncommitted, or for that particular presidential candidate, equals at least the percentage determined by State political party rule of the total vote cast for all presidential candidates or as uncommitted for that political party at that 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. However, 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, whichever is earliest.

If a vacancy occurs in the elected delegation, it must be filled by an alternate selected by the caucus for the candidate to whom the original delegate was committed,

and the alternate shall be required to meet the same qualifications of the delegate being replaced.

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 can not participate in the selecting of delegates to his or her political party's national convention. This provision does not prohibit that person from participating in other convention business. Neither this provision nor any other provision of law shall be understood to restrict the opportunity of any registered elector in this State, including all public officials, to be elected as a delegate to any county, district, State, or national convention of the elector's political party.

Sec. 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.

Legislative Analyst: Craig Laurie

#### **FISCAL IMPACT**

There could be an indeterminate cost associated with the change of date of a 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 ascertaining each voter's party ballot selection for the primary election.

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of using the information indicating which presidential primary ballot an elector requested for a purpose not specified in the bill. 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.

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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.