



**House
Legislative
Analysis
Section**

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PRESIDENTIAL PRIMARY

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**Senate Bill 349 as passed the Senate
First Analysis (6-29-88)**

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Mich. State Law Library

**Sponsor: Sen. Dick Posthumus
Senate Committee: Government Operations
House Committee: Elections**

THE APPARENT PROBLEM:

Michigan abolished its presidential primary in 1983 when it became clear that neither the Republicans nor the Democrats intended to use the primary as a means of selecting delegates in 1984. Prior to repeal, Michigan held an "open" primary; that is, while voters could only vote for the candidates of one party they did not need to be enrolled as party members and could even be members of a rival party. (This, of course, permitted so-called crossover voting, resulting in primary winners not necessarily being the choice of party members. Democrats point to George Wallace's 1972 primary victory as a case in point.) Prior to the 1980 presidential election, the Democrats nationally adopted a rule preventing its members from recognizing the results of open presidential primaries in selecting delegates to the national convention. With only Republicans participating that year, state election officials say, participation fell to under 11 percent of the voting age population (from 33 percent in 1972 and 28.3 percent in 1976). Both major parties have since adopted variations on the caucus system of delegate selection that have created controversy and led to charges that too many voters are left out of the presidential selection process. Furthermore, the Republicans' 1988 caucuses sparked lawsuits, created serious and painful divisions, and generated much negative publicity. Efforts have been underway recently to return to a presidential primary system that will meet with approval of the major parties. Since the parties are able to opt out of the primary if it doesn't fit with their rules, their cooperation is essential if Michigan is to have an efficacious and cost-effective presidential primary.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to establish a "closed" presidential primary in Michigan to be held on the third Tuesday in March of each presidential election year. A party that received five percent or less of the total vote cast nationwide in the most recent presidential election could not participate. For the 1992 presidential election year and beyond, a voter would be required to declare a party preference at least 30 days before the presidential primary in order to be allowed to vote in the primary and could vote only for that party's candidates. A voter who failed to record his or her preference with a city or township clerk, or who indicated no party preference, would not be eligible to vote in the presidential primary. The bill would require the state to reimburse counties, cities, and townships for the cost of conducting the presidential primary, and would require the legislature to appropriate money from the general fund to cover the costs. The bill also contains, among other things, provisions regarding how presidential candidates would get on the primary ballot, how delegates to the national conventions would be selected, the nature of the commitment of delegates to candidates, and the means by which voters could indicate their party preference. The bill would specify that if the

state law regarding delegate selection conflicted with a state or national political party rule, the party rule would apply unless the party's rules required that state law be followed. The bill also would reinsert several sections in the election law similar to those repealed by Public Act 181 of 1983, which abolished the presidential primary.

Selection of Presidential Candidates. The secretary of state would, no later than 4 p.m. on the second Friday in December of the year preceding a presidential election year, 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 will be held. By 4 p.m. the next Tuesday, the state party chairpersons would have to file with the secretary of state a list of people they considered their respective parties' potential presidential candidates. The secretary of state would then notify the candidates on the lists of Michigan's primary requirements. The candidates notified would have to file an affidavit with the secretary of state no later than the second Friday in January indicating party affiliation and willingness to appear on the primary ballot. A candidate who did not appear on the lists prepared by the secretary of state or the party chairs could get on the primary ballot by filing, along with the affidavit, a nominating petition bearing signatures equal to one-half of one percent of the total votes cast in the state at the previous presidential election for the candidate of the party whose nomination was being sought. (However, the signature requirement could not exceed one thousand times the number of congressional districts.) A signature would not be valid if collected before the previous November 1. The petitions would also be due on the second Friday in January. The ballot would also contain a space for voters to vote uncommitted.

Voter Registration. Under the bill, registered electors and people applying to register could declare (or change) their party preferences or declare that they had no preference by applying to the appropriate city or township clerk or at a Department of State branch office. Beginning March 1, 1989, people could indicate party preference when renewing a driver's license. People already registered would also be able to declare their preference to the local clerk in writing if they chose. (They would have to include name, address, date of birth, and signature.) Until February 15, 1992, local clerks and agents of the secretary of state would have to notify people applying to register or changing registrations that they could not vote in a presidential primary election unless they had declared a party preference at least 30 days in advance. The notice, to be provided by the secretary of state, would also have to point out that a declaration of party preference remained in effect until the voter indicated a new preference or declared no preference. People voting in city and township elections would also be provided the notice on a form that would allow them to declare a party

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preference or declare no preference. Local clerks would be required to send a corrected voter identification card to an elector who changed or added a declaration of party preference or of no party preference. A voter's declared preference would be placed on and remain on the precinct registration file and the master registration file of the voter until changed. If a registration list were used for a presidential primary instead of a precinct registration file, the list would include the party preference. If a voter did not make a declaration of preference or of no preference, he or she would be considered to have declared no party preference.

Delegate Selection. Under the bill, delegates to a national convention would include only those delegates elected at a state convention. Delegates to the state convention would include only those elected at a county convention, except for state legislators who by virtue of office are entitled to be delegates-at-large. (Legislators serving as delegates-at-large in this way could not participate in selecting national delegates but could participate in other business.) Before an individual could be elected as a delegate to the state convention or national convention of a political party, he or she would have to sign an affidavit indicating to which candidate he or she was committed or indicating that he or she was uncommitted. A person seeking election as a delegate to the state convention would file the affidavit with the county chair or district committee chair, who in turn would file a copy with the chair of the state central committee. A person seeking election as a delegate to the national convention who did not file the state convention affidavit would have to file the required affidavit with the state central committee chair. A delegate would be bound to vote for the candidate to which he or she was committed until the end of the first ballot at the national convention unless the candidate publicly withdrew or released the delegate by written notice to the state central committee chair. Before being elected a national convention delegate, a person would have to be certified by the presidential candidate to which he or she was committed. National convention delegates would be elected in proportion to the presidential primary results for those candidates (including "uncommitted") receiving more than five percent of the total votes cast.

The bill would specify that delegates to county conventions would comprise precinct delegates elected at the last prior August primary election, incumbent county officials, incumbent state legislators, and unsuccessful candidates for county and legislative offices at the most recent regular or special elections. The provisions governing county and state conventions would remain as they are in the election law, except that congressional district caucuses at the state convention would each select three delegates (rather than two) to the national convention, with the remainder to be elected by the state convention as delegates-at-large.

As mentioned above, the bill would specify that a state political party would have to follow state law pertaining to delegate selection if required to follow state law by a state or national party rule. If there was no such rule, a requirement of the election law regarding delegate selection (after the election of delegates to the county conventions) would not apply if it conflicted with a rule of the political party.

Canvassing. The Board of State Canvassers would canvass the returns received from the boards of county canvassers and certify the statewide and congressional district results of the presidential primary election to the secretary of state. The secretary of state would certify the results to the chairs of the state central committees of the participating political parties. The usual provisions regarding the availability of

recounts would not apply to the presidential primary. Notwithstanding other election law requirements, the secretary of state could authorize the immediate release of all ballots, ballot boxes, voting machines, and equipment used in cities conducting a city election in the first week in April if the county clerk certified that there were no defects or malfunctions discovered or alleged and that no other elections or questions appeared on the same election equipment.

Reimbursement to Local Units. Counties, cities, and townships would have to submit a verified account of actual costs no later than 90 days after the presidential primary and the state would have 90 days to pay or disapprove the verified account. The Department of Treasury and the secretary of state would have to agree as to what constitutes valid costs of conducting an election.

Reimbursable costs would not include salaries of permanent local officials, the cost of reusable supplies and equipment, or costs attributable to local special elections held in conjunction with the presidential primary.

The bill's provisions would take effect September 1, 1988.

MCL 168.495 et al.

FISCAL IMPLICATIONS:

The Department of State estimates that the 1992 presidential primary will cost the department between \$1,757,431 and \$2,003,181 for branch office transactions and forms, and \$5,210,249 in reimbursements to local units. (6-28-88)

ARGUMENTS:

For:

The bill provides Michigan with a workable presidential primary that meets the requirements of the major political parties and offers Michigan voters greater opportunity to participate in the presidential selection process. Even if participation in a so-called closed primary is low, state election officials say, it is likely to exceed voter participation in the parties' current caucus systems. The primary would be "closed," as national Democratic Party rules demand, but voters would be given ample notice and opportunity to express their party preference before the 1992 primary so that people will not be turned away from the polls for failure to comply with the new primary law. Further, voters could change their party preference up to 30 days before the primary. The primary would be held early, in March, and the date is in line with proposals for a Great Lakes' primary, as some advocate to offset the influence of the South on Super Tuesday. The bill assures local units of government that they will be reimbursed for their costs, and contains provisions to guard against interfering with cities whose elections are held in April, soon after the primary date.

Against:

Many people are offended by the idea of a closed primary. It goes against the Midwestern tradition of independent voters. It is offensive and undemocratic to require independent voters to express a party preference before they can vote in a presidential primary. Those who choose not to are effectively disenfranchised. Independent voters should be free to choose which party's primary to participate in without designating a party preference on their voter registration card (since they could only vote in one party's primary anyway). Selecting a president should be the business of all voters not just those who are members of the two major parties.

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Response: If there is to be a presidential primary, it must be acceptable to the major parties, given the state of the law on this subject. An open primary is not feasible if national party rules forbid it. The bill will allow greater participation in the presidential selection process for independents than currently exists. All independents need do is temporarily express a party preference a month before the election. It must be remembered that the primaries are party affairs; a party's candidate ought to be selected by people affiliated with that party and not by members of a rival party or people who have no interest in the party's fortunes.

POSITIONS:

The secretary of state supports a presidential primary bill that both major political parties have agreed to. (6 28 88)

The Michigan Democratic Party supports the bill (6-28 88)

Common Cause in Michigan has no formal position on the bill, but in general supports efforts to make the electoral system more accessible. (6 28 88)