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BILL ANALYSIS

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**Senate Bill 349 (Substitute S-6 as reported)****Sponsor: Senator Dick Posthumus****Committee: Government Operations****Date Completed: 3-7-88****RATIONALE**

Currently, the political parties in Michigan choose their parties' nominee for President through party caucuses that select delegates to send to their respective national conventions. In the past two years this delegate selection process has caused a great deal of negative publicity, particularly in the Republican party where competition for delegates among various candidates' supporters has sparked a series of lawsuits and much ill-will in the party. There have been numerous complaints that the caucus system in both major parties has become so complicated and confusing that it prevents the average person from effectively participating in the choosing of presidential candidates and has left the selection process open to manipulation by party officials.

In 1972, provisions were inserted in the Michigan Election Law to establish an "open" presidential primary, meaning that while voters 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, and in fact could be members of another party. This presented the possibility that members of one party could temporarily "cross over" to cast votes for candidates of another party, so that the winners might not necessarily be the most popular choices among their own party members. Indeed, many Democrats believe that this is exactly what happened in 1972, when George Wallace won the Michigan Democratic presidential primary. To help ensure that Democratic winners in presidential primaries were chosen by Democrats only, the National Democratic Party adopted a rule prior to the 1980 presidential election that prevented its members from recognizing the results of open presidential primaries in making their selection of delegates to the national nominating convention. Michigan Republicans then decided prior to 1984 not to use the presidential primary as a means of selecting delegates in 1984. In effect, this meant that the results of an open presidential primary in Michigan were not binding in any way on delegates to the Democratic convention in 1980 and to either the Democratic or Republican conventions in 1984. As a result of these actions the Michigan Election Law was amended in 1983 to eliminate the presidential primary. An open primary effectively left Michigan voters with no voice in the nominating process, and the current caucus system is considered inefficient and contentious. It has been suggested that the presidential primary be re-established and structured so that it satisfies the conditions of both national parties.

**CONTENT**

The bill would amend the Michigan Election Law to establish a "closed" presidential primary in Michigan. 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. 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 establish the date of Michigan's presidential primary as the third Tuesday in March.

The bill would require that the Legislature appropriate money from the General Fund to pay for the costs of a presidential primary.

The bill would reinsert several sections in the Election Law that were repealed by Public Act 181 of 1983 regarding the regulation of a presidential primary, and specifies that if a delegate selection requirement under the bill conflicted with a rule of a political party, the requirement would not apply.

Following is a detailed description of the bill.

**Presidential Primary Election**

The bill would require that a statewide presidential primary be conducted on the third Tuesday in March in each presidential election year. A voter could vote only on the presidential primary ballot of the party preference shown on the voter's registration card or the form used to show the change or addition of a party preference. The voter would not be allowed to vote if he or she were registered as having no party preference or did not have a form indicating a change or addition of a party preference.

The Secretary of State would be required, by the first Friday of January in a presidential election year, to issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each party's nomination. On Tuesday following the first Friday in January, the state chairperson of each political party would be required to file, with the Secretary of State, a list of individuals whom they considered potential presidential candidates for their party. The Secretary of State would have to notify each potential presidential candidate on the lists of the provisions of the bill relating to the presidential primary. A candidate notified by the Secretary of State who filed an affidavit with the Secretary of State indicating his or her party preference, and willingness to appear on the ballot, would have his or her name printed on the primary ballot under the appropriate political party heading. The affidavit would have to be filed with the Secretary of State by the third Friday in January. An individual who fulfilled these requirements, but was not listed as a candidate by a State Central Committee or the national news media, could appear on the ballot if all of the following applied:

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- He or she filed nominating petitions with the Secretary of State by the third Friday in January.
- The nominating petitions contained valid signatures of registered and qualified electors equal to at least one-half of 1% of the total votes cast in the State at the previous presidential election for the candidate of the party of which the individual sought nomination, but not to exceed 1,000 times the total number of congressional districts in the State.
- Signatures were obtained no sooner than November 1 of the year prior to the presidential election year.

The names of presidential candidates would have to be rotated on the ballot, and the ballot would have to contain a space for an elector to vote uncommitted.

The bill specifies that absent voter counting boards could not be used for a presidential primary election if political parties elected delegates at that election.

The Secretary of State would have to certify the statewide and congressional results of a presidential primary to the chairperson of the State Central Committee of each party.

Only a political party that received 5% or more of the total vote cast nationwide in the last presidential election could participate in the election.

#### Voter Registration

The bill provides that persons applying to register to vote or update their registration, or persons voting in city or township elections, would have to be given an opportunity to indicate a party preference or "no preference" on the applicable forms.

Until February 15, 1992, the Secretary of State would be required to provide to persons registering to vote, updating their registration, or renewing their driver license a notice explaining the party preference requirements for presidential primaries. City and township clerks would be required to provide the same notice to new registrants and to voters attending the polls for any election conducted on the city or township level. The notice would have to include the following information:

- For purposes of voting at a presidential primary, the voter would have to declare a party preference.
- If a voter chose to register with no party preference, he or she would not be eligible to vote at the presidential primary unless the voter declared a party preference at least 30 days before the primary.
- Even if currently registered to vote, the voter would not be allowed to participate in the primary election unless he or she had declared a party preference.
- If the voter declared a party preference or declared no party preference, the declaration would remain on the registration until changed by the voter.

A voter could change his or her party preference or declare a party preference for the purpose of voting in a presidential primary by applying in person with a city or township clerk, or sending to the city or township clerk a signed request that included the voter's name, address, date of birth, new party preference or no party preference, date, and signature. The clerk would be required to compare the signature on the request with the signature on the registration record. If the signatures matched, the clerk would have to change the record to the voter's choice on original and duplicate registration cards. A clerk could not change a voter's party preference after the 30th day before a presidential primary.

#### Political Party Rules

The bill specifies that a delegate selection requirement of the Act would not apply to a political party if that requirement conflicted with a rule of that party. The bill would require a State Central Committee to file with the Secretary of State, relating to the presidential primary, all "rules, procedures, allocation of national delegates, additional qualifications for delegates and delegations of authority" by August 30 of the year preceding a presidential election. If a State Central Committee failed to file the required rules, the Secretary of State would have to issue them to the extent necessary.

#### Primary Delegates

The bill would require that in each presidential election year delegates to county conventions be elected at the primary election or at the August primary election, whichever was specified in a party's rules as filed with the Secretary of State. Delegates elected in this manner would serve until a successor was elected. The chairperson of each county political party would be required to certify to the county election commission, by the second Tuesday in November of the year preceding a presidential primary, the number of county convention delegates to be elected in each precinct in the county. If the chairperson failed to certify the number of delegates by the specified date, the county election commission would be required to determine the delegate number. The apportionment of delegates would be based on the precincts as they exist on January 1 of the election year, as currently provided in the Act.

If a delegate were to be elected at the primary election, the ballot would have to specify, for each candidate for the post of delegate, that the candidate for delegate was uncommitted, or would have to list the name of the presidential candidate that the delegate candidate indicated on his or her nominating petition. A delegate who did not file an affidavit meeting the requirements of the Act would be designated as uncommitted.

The names of delegate candidates would have to be printed on the same ballot and under the same party heading as candidates for president of that party.

#### Delegate Commitments

If elected, a delegate to the county convention would be bound to vote at each stage of the presidential nomination process, until the end of the first ballot at the national convention, for the presidential candidate who was indicated on the delegate ballot, if any. Before an individual not elected as a county convention delegate could be elected as a delegate to the State convention or to fill a vacancy, he or she would have to sign an affidavit including one of the following:

- The name of a presidential candidate of that person'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. (This provision would apply only if the presidential candidate were eligible to have his or her name on the primary election ballot.)
- A statement that the person was uncommitted regarding presidential candidates.

Committee delegates could be released from their commitments if released from the commitment by written notice to the chairperson of the State Central Committee by the presidential candidate, if the presidential candidate publicly withdrew from the convention, or if a majority of

the delegates bound to vote for the candidate voted at the national convention to release themselves from the commitment.

#### Nominating Delegates

The nominating petition of a delegate candidate to a county convention who sought election as delegate to a presidential primary would have to include one of the following:

- The name of the presidential candidate of the same party as the delegate candidate that the delegate candidate, if elected, would be bound to vote for at each stage of the nominating process.
- A statement that the delegate candidate was uncommitted regarding presidential candidates.

Nominating petitions would have to be filed by the fourth Friday in January in a presidential election year. A delegate candidate could withdraw no later than the Tuesday following the fourth Friday in January. A complaint regarding the signatures on a nominating petition could not be investigated unless received by the county clerk by the Tuesday following the fourth Friday in January.

#### Election Costs

The State would be required to reimburse local units of government for the cost of conducting a presidential primary, not to exceed the actual cost of the election. Payment would be made to a local unit after verification of actual cost by the Department of Treasury and agreement with the Secretary of State as to what constituted valid costs. Valid costs could not include salaries of permanent local officials, the cost of reusable supplies and equipment, or costs attributable to local special elections. Payment or disapproval of a verified account of actual costs would have to be made within 90 days after the State received it.

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### **FISCAL IMPACT**

The bill would result in increased costs to State government and local government.

The State would be responsible for reimbursing each county, city, and township for the cost of conducting a presidential primary. The last presidential primary held in the State of Michigan was in 1980. The cost of that primary was approximately \$3.4 million. The State and local units of government would also incur administrative costs regarding electors' declaration of party preference.

### **ARGUMENTS**

#### ***Supporting Argument***

The caucus system for selecting delegates to the major parties' national conventions has resulted in bickering, lawsuits, and widespread discontent. Indeed, there are those who feel the current selection process is unsavory, conducive to manipulation by party bosses, and virtually meaningless to the average citizen. The systems of selection in both the Republican and Democratic parties are so confusing and convoluted that they actually have become obstacles to participation by regular voters. Further, the open primary before, and the caucus system now, have only served to minimize the role the State's voters have in naming party presidential candidates. The State's populace deserves a more representative method of selecting delegates to national conventions that nominate candidates. The current system only causes

frustration and apathy. While the bill would not allow total voter freedom in preference for a candidate (because Democratic party rules would prevent recognition of the results), it would give voters a chance to express their preference within the confines of choosing to vote in one party primary. This "closed primary" method would be preferable to the current closed caucus system.

#### ***Supporting Argument***

The bill, and an accompanying resolution (Senate Concurrent Resolution 509) urging a "Great Lakes" primary, would bring all of the presidential candidates into Michigan to campaign. This would help Michigan voters form opinions and would stimulate interest in the political process. Further, it would likely give the Great Lakes region a boost in the importance of its input into the nominating process, and would counter the influence of "Super Tuesday" in the South.

#### ***Opposing Argument***

The bill runs counter to democratic principals and would cause a great deal of trouble for elections officials. Requiring independents to declare a party preference before allowing them to vote would go against the strong midwestern tradition in which there are substantial percentages of independent voters as opposed to party regulars. Independents should be allowed to vote without declaring a preference. In addition, many persons, both independents and those who favor one party, would likely be angered when they showed up at the polls to vote in a presidential primary only to discover that they couldn't because they had not declared a party preference. Further, if the bill were to require persons to declare party preference or independent status for the presidential primary, but not for other primaries, it would confuse the public by creating two systems. If party preference had to be declared for presidential elections, why not for other elections as well?

**Response:** A presidential primary can succeed only if it conforms to the rules of both national parties; to allow independents to cast a ballot that contained both parties' nominees would create a nightmare for elections officials and cause the results to be declared nonapplicable by the parties. As for the contention that voters would be angered to show up at the polls and not be allowed to vote, the bill contains several provisions that would require the Secretary of State and local clerks to notify potential voters of this requirement before the 1992 election. Finally, although requiring voters to declare a party preference at a presidential primary but not at other primaries would create two systems, it would do so for good reason. There is a big difference between a presidential primary and a local election, because in many local elections the winner of the primary becomes the elected official. Requiring party preference declarations, in local elections in particular, could truly exclude voters from effective participation in the elective process.

The bill would be particularly helpful to independent voters, who are shut out of the process under the caucus system. While requiring independents to declare a preference in order to vote may seem like an unfair requirement, such persons would at least have an opportunity to have a say in who was nominated; under the current system they have no say.

#### ***Opposing Argument***

The caucus system, while much maligned, is preferable to the closed primary as proposed in the bill. The purpose of

a primary is to choose a party's candidate, not to elect a person to office. Persons who don't want to participate in the party system, independents, can just wait to see who is nominated and then vote in the general election. Persons who don't have the inclination to participate in a party's system have no business joining in the selection of a party's nominee.

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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.