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Senate Bill 349 (as enrolled)

(Public Act 275 of 1988)

Sponsor: Senator Dick Posthumus

Senate Committee: Government Operations

House Committee: Elections

Date Completed: 8-24-88

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 to

be held on the third Tuesday in March of each presidential election year. 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 only vote 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 specifies that if the State law regarding delegate selection conflicted with a State or national policy 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.

The bill would take effect September 1, 1988. 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 voter's party preference as shown on the precinct registration file or registration list. The voter would not be allowed to vote if he or she were registered as having no party preference.

The Secretary of State would be required, by the second Friday of December in the year preceding 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 that Friday, the State chairperson of each political party would be required to file, with the Secretary of State, a list of individuals whom the chairperson considered potential presidential candidates for his or her 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.

OVER

S.B. 349 (8-24-88)

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 second 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:

- He or she filed nominating petitions with the Secretary of State by the second 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 Board of State Canvassers would be required to canvass the returns received from the boards of county canvassers, and certify the statewide and congressional district results of the presidential primary to the Secretary of State. The Secretary of State would have to certify the statewide and congressional results to the chairperson of the State Central Committee of each party. 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 conducts a city election in the first week of 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.

The bill provides that the current provisions of the election law that allow candidates to petition for a recount would not apply to a presidential primary election.

Only a political party that received 5% or more of the total vote cast nationwide for the office of President 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 as the voter's preference 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, and signature. In a written request, if an elector failed to include his or her birth date, the clerk would be required to make the requested change if the clerk could otherwise determine the elector's identity. 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.

Currently, under the Act, local clerks are required to keep voter information in precinct registration files. The bill would require that a voter's party preference or declaration of no party preference be placed and remain on the precinct registration file and the master registration file until changed by the voter. The Act allows the election commission of a city, village, or township to authorize the local clerk also to create a registration list. The registration list can be used instead of the precinct registration file wherever the Act provides for use of the file. A registration list must contain the name, address, and birth date of each elector. The bill would require that an elector's party preference or declaration of no preference also be kept on a registration list.

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 the candidate to whom 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 whom 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 whom

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 5% of the total votes cast.

The bill specifies 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 current provisions in the law governing county and State conventions would remain as they are, 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.

The bill also specifies 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 were 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.

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 and the Department of Treasury 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.

MCL 168.495 et al.

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 voicing their 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.