



House
Legislative
Analysis
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NOTA: 42ND DIST. GOP PRIMARY

**House Bill 4794 (Substitute H-3)
First Analysis (2-15-96)**

**Sponsor: Rep. Greg Kaza
Committee: Local Government**

THE APPARENT PROBLEM:

Some people believe that it would be a meaningful political reform to allow voters to cast a ballot for "none of the above" (or NOTA) in elections. NOTA advocates say it is a way for citizens to register their dissatisfaction with the political process, with the two major parties, or with candidates in a specific race in a meaningful and measurable way. It allows voters to give voice to their frustrations and encourages voter participation in elections. Having NOTA on the ballot, say supporters, can have an effect on the behavior of candidates, who will plan and carry out their campaigns keeping in mind that voters have this option. This could have the effect of reducing negative campaigning. While some people advocate a non-binding NOTA, as has existed in Nevada since 1975, others believe a binding NOTA, where "none of the above" could win and force a new election would have an even more salubrious effect on the political system. Legislation has been introduced to allow an experiment with a non-binding NOTA in Michigan. (The sponsor of the legislation produced NOTA stickers for voters to use as a write-in vote in his 1994 election.)

THE CONTENT OF THE BILL:

The bill would amend the Michigan Election Law to specify that all ballots provided by the county election commission for the August 1996 Republican primary for the 42nd state representative district would have to contain a space for the voter to cast a vote for NOTA (none of the above). NOTA would have to appear last on the ballot following the names of the Republican candidates for the 42nd state representative district. The Republican candidate receiving the most votes at the primary election would be nominated notwithstanding the number of votes cast for NOTA.

A vote cast for NOTA and a Republican candidate for the same office would be considered an overvote and no votes would be counted for the office. The votes cast for NOTA would be canvassed and certified in the same manner as votes cast for other candidates.

On or before September 5, 1996, the director of elections (within the Department of State) would be required to deliver a written report to the House Local Government Committee and the Senate committee that handles election issues. The report would have to contain the public response to NOTA on the ballot.

MCL 168.561b

FISCAL IMPLICATIONS:

There is no information at present.

ARGUMENTS:

For:

This bill would allow for an experiment with NOTA ("none of the above") in the Republican primary in one district this August. Subsequently, the public, election officials, and legislative committees could evaluate the outcome. In this case, the election would feature a non-binding NOTA, whereby the candidate with the largest vote total would still be the winner. However, the votes cast for NOTA would be counted and certified along with the votes for candidates.

NOTA gives greater voice to the disenfranchised voter. Such voters may feel that the two major political parties do not represent them very well. They may want to use NOTA to protest the tone of a campaign or to express disapproval of the tactics (e.g., negative advertising, avoiding important issues) of the candidates. They may want to express their dissatisfaction with an incumbent's performance in office without voting for another candidate. NOTA can be useful in districts where one party dominates as a way to send a message to the candidate (or to force a new candidate if NOTA were binding). Some commentators consider NOTA preferable in that sense to term limits, since only elected officials with whom the voters are dissatisfied would be affected. Certainly it is better for the ballot to allow a protest vote than to require voters to skip a particular race because they cannot support either candidate.

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Against:

If casting a vote for NOTA has no effect on the outcome, it is a meaningless, wasted vote. In many cases, such a vote would not even be open to reliable interpretation. A NOTA vote could simply be the expression of thoughtless, lazy cynicism. NOTA lets voters off the hook. Disaffected and unhappy citizens ought to mobilize and work within the political parties, create new parties, or support independent candidates. People ought to get involved in generating candidates they can support and advocating for their principles, programs, or policies. Some people are concerned that NOTA could have the effect of protecting incumbents, by draining votes from challengers. Further, if NOTA were adopted statewide, it would have the effect of lengthening what is already a discouragingly long ballot in Michigan. A binding NOTA would raise a host of additional questions, including the cost associated with multiple attempts to elect public officials.

Against:

Is it appropriate (or constitutional) to enact an election law that affects not only one district, not only one election, not only just the primary portion of the election, but also only one side of the ballot in a primary election?

Response:

Obviously advocates of NOTA would prefer that it apply to all elections everywhere in the state, and that is one way (among several) to overcome the objection stated above. However, there is value in permitting a pilot project that can then be evaluated by election officials and the legislature as regards its use by voters and its impact on election clerks.

POSITIONS:

A representative of the Michigan Municipal League testified that the organization is not opposed to the substitute but would be concerned about extending this concept further. (2-14-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.