

Legislative Analysis



2012 PRESIDENTIAL PRIMARY ON FEBRUARY 28

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Senate Bill 584 (Substitute S-2)

Sponsor: Sen. Randy Richardville

(Enacted as Public Act 163 of 2011)

House Committee: Redistricting and Elections

Senate Committee: Local Government and Elections (discharged)

First Analysis (9-20-11)

BRIEF SUMMARY: The bill would provide for a presidential primary in Michigan, to be held on February 28, 2012.

FISCAL IMPACT: The bill to establish a presidential primary election on February 28, 2012 would cost \$10 million, an amount set-aside in Public Act 63 of 2011 to cover the costs. Most of these funds would reimburse local units of government for the cost of administering the presidential primary. See *Fiscal Information*.

THE APPARENT PROBLEM:

The Michigan Election Law currently calls for the presidential primary to be conducted on the fourth Tuesday in February in each presidential election year. Those who vote in the presidential primary election select their favorite candidate running for the presidency in their political party. Generally (unless a political party decides to select its presidential candidate in a statewide caucus of its members), a particular candidate's total primary vote determines the number of delegates that the state political party sends to that political party's national convention where the party's presidential candidate is formally nominated.

Over the past two decades, the Michigan legislature has passed laws to establish "closed" presidential primaries (in 1992 and 2008), while in other years those "closed" primary laws have been repealed in favor of "open" presidential primaries. The difference between the two is that party preference must be declared, before voting, in the "closed" primary system. And, over the past two decades, the two major political parties-- Democrats and Republicans--have asked their members to participate in "closed" primaries, "open" primaries, or none at all, sometimes opting instead for a statewide caucus of party members. See *Background Information*.

Legislation has been introduced by the Republican Party to establish a "closed" presidential primary on February 28, 2012.

THE CONTENT OF THE BILL:

The bill would provide for a presidential primary in Michigan, to be held on February 28, 2012.

The bill is an amendment to the Michigan Election Law (MCL 168.613a, 168.614a, 168.615a, and 168.759a). The law currently calls for the presidential primary to be conducted on the fourth Tuesday in February in each presidential election year. That date in 2012 is February 28, and the bill does not change that date. The bill's other provisions include the following.

Voter's Choice of Party Primary

In order to vote in the presidential primary, a voter would have to indicate which political party ballot he or she wished to use. This would be done when appearing at the election on a form prescribed by the secretary of state.

Record of Party Preference

The secretary of state would have to develop a procedure for city and township clerks to use in order to keep a separate presidential primary record that would contain the printed name, address, and qualified voter file number of each elector, and the political party ballot selected by that elector at the presidential primary election. This information is not exempt from disclosure under the Freedom of Information Act.

In addition, the secretary of state must prescribe procedures for contacting an elector who is an absent uniformed services voter or an overseas voter, and who is eligible to receive an absent voter ballot, or who applied for that ballot, offering the elector the opportunity to select a political party ballot for the presidential primary election.

Retention and Subsequent Destruction of Party Selection Records

Within 71 days after the presidential primary, the secretary of state would make available to the public a file of the records for each political party in an electronic format. The secretary of state would set a schedule for county, city, and township clerks to submit the data required. Then, after the 22-month federal election records retention period expired, the secretary of state and county, city, and township clerks would be required to destroy the information indicating which political party ballot each voter selected at the presidential primary election.

Ballot Rotation

Currently the law requires that when printing the presidential primary election ballot, the names of the presidential candidates under each political party heading must be rotated on the ballot. Senate Bill 584 (S-2) would retain this provision but clarify it to require that the names of the presidential candidates be rotated "by precinct."

List of Presidential Candidates; Put on Internet

The election law requires that the secretary of state issue a list of the individuals identified by the national news media to be potential presidential candidates for each political party's nomination. (This is to be done by 4 p.m. of the second Friday in November of the year before the presidential election -- which will be November 11, 2011, Veterans Day.) Senate Bill 584 would amend the law to require that list be made available to the public on an internet website maintained by the Department of State.

Then, not later than 4 p.m. of the following Tuesday, the state chairs of each political party for which a presidential primary election will be held must file with the secretary of state a list of individuals that he or she considers to be potential presidential candidates. Senate Bill 584 would require that the secretary of state also make these lists available to the public the internet website.

Notification of Candidates and Candidates' Responses

The secretary of state is responsible for notifying the potential presidential candidates about the state's presidential primary and causing the name of each candidate to be printed on the appropriate political party's presidential primary ballot. A presidential candidate can file an affidavit with the secretary of state to indicate party preference, if it is different from the party preference contained in the secretary of state's notification, and the secretary of state must follow the candidate's preference. Senate Bill 584 would retain this provision. However, the bill adds a provision specifying that if the affidavit of a presidential candidate indicates that the candidate has no political party preference, or the candidate indicates a political party preference for a political party other than a party for which a presidential primary election will be held, then the secretary of state would be prohibited from causing that candidate's name to be printed on a ballot for the presidential primary election.

In addition, the law allows presidential candidates notified by the secretary of state to file an affidavit indicating that they do not wish to have their names printed on the presidential primary ballot. Senate Bill 584 would modify this provision to make the affidavit specifically state that "(Candidate's name) is not a presidential candidate."

HOUSE COMMITTEE ACTION:

The House Committee on Redistricting and Elections reported out the Senate-passed version of Senate Bill 584 (S-2) without amendments.

BACKGROUND INFORMATION:

For a detailed description of the Michigan presidential primary system, and its history, see the 18-page report entitled "Michigan Presidential Primary Facts and Statistics" prepared by the Bureau of Elections in the Michigan Department of State, and published in June 2011. That report is available at http://www.michigan.gov/documents/MichPresPrimRefGuide_20863_7.pdf

FISCAL INFORMATION:

Under Senate Bill 584, a presidential primary would be held on February 28, 2012. In PA 63 of 2011, \$10.0 million GF/GP was appropriated to cover the costs associated with the 2012 presidential primary. Most of these funds will reimburse locals for the cost of administering the presidential primary.

The bill would also increase administrative costs for the Secretary of State. The Secretary of State would have to administer and create new voter files that would specify

the party the voter affiliates with. Moreover, the Secretary of State would be required to contact those persons eligible to vote through an absentee ballot and offer them the ability to identify with a political party. The records would need to be maintained for the 22-month federal election records retention period and would then need to be destroyed. Finally, the Secretary of State would realize administrative costs associated with listing the potential presidential primary candidates identified by the national news media on their website along with the lists of potential presidential candidates developed by the state chairs of each political party.

Local clerks could experience costs associated with keeping, and submitting to the Secretary of State, separate presidential primary records that would contain the printed name, address, and qualified voter file number of each elector, and the political party ballot selected by that elector at the presidential primary election. Local costs would likely be offset through the presidential primary funding appropriated in PA 63 of 2011.

ARGUMENTS:

For:

Those who favor the legislation to establish a "closed" presidential primary on February 28, 2012, offer two chief arguments. First, they note that the field of Republican candidates seeking the presidency is a large one, and the primary election will allow Michigan voters who declare their Republican party preference to cast their ballots for their favorite candidates. A political party's candidates should be selected by members of the party -- that is how the political system works best. Voters who are not willing to identify themselves as members of a political party should not expect to be able to choose the party's standard bearer. Second, those who favor the bill note that February 28 is already an election day in Michigan—one of the days set aside following the election consolidation reforms. Consequently, the presidential primary can "piggyback" with other local elections (such as millage elections and recall elections), saving the taxpayers the cost of a special presidential primary election.

Against:

Those who oppose the bill to establish a "closed" presidential primary have offered three criticisms. First, opponents say that the Republican Party should pay for the \$10 million cost of the presidential primary, because only the Republican presidential candidates' names will appear on the ballot. They say if there is an extra \$10 million in the state budget, it should be used to restore funding for vital services, such as public education. They point out that the Democratic party will not participate in the 2012 presidential primary (their candidate, the incumbent president, is already identified), and they claim that in similar circumstances in 2003-04 (when the Democrats had a contest and the Republicans had an incumbent president), \$7 million in taxpayer funding for a presidential primary was withdrawn, and the primary canceled. Second, opponents of the "closed" presidential primary say that holding the election on this regularly scheduled election date means the election will attract mainly Republican voters, and that local issues appearing on the ballot (such as millage elections and recall elections) will not be uniformly advertised nor fairly decided. Third, opponents criticize the bill because it

represents a lost opportunity to amend the Election Law more comprehensively to increase Michigan's voter participation. In particular, they say the bill should be amended to allow pre- registration, early voting, and "no reason" absentee voting; however, attempts accomplish these goals failed to pass in committee.

POSITIONS:

The Secretary of State is neutral on the bill. (9-20-11)

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■ 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.