



**House
Legislative
Analysis
Section**

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OPEN PRESIDENTIAL PRIMARY

**House Bill 4435 (Substitute H-1)
First Analysis (5-18-95)**

**Sponsor: Rep. Ken Sikkema
Committee: Local Government**

THE APPARENT PROBLEM:

1996 is a presidential election year. The two major political parties will be selecting delegates to the national conventions that select their presidential candidates. How delegates are selected is typically a matter dealt with in state election law, but where party rules conflict with state law, generally speaking, the party rules take precedence. The Michigan Election Law calls for a "closed" presidential primary to be held on the third Tuesday in March (in 1996, that date is March 19). The primary is described as "closed" because the election law specifies that voters must declare a party preference at least 30 days before the primary and that they can only vote in the primary of that party. Public Act 275 of 1988 created the closed primary and provides for the recording of a voter's party preference on a variety of registration documents. That act was passed in an attempt to develop a primary system satisfactory to both major political parties. The national Democratic Party had adopted a rule prior to the 1980 election refusing to recognize the results of open primaries, and after the primary of that year (in which only Republicans participated), both parties in Michigan adopted variations of the caucus system, which themselves were controversial. The open primary was abolished in 1983 and revived as a closed primary after the caucuses of 1988.

The notion of a closed primary and, in particular, the idea of requiring voters to declare party preference are usually characterized as extremely unpopular with Michigan's citizens. Indeed, in 1992, the first year to which the new law applied, both parties opted for different approaches to the primary. The Republican party permitted voters to participate in their primary despite any previous declaration of party preference. The Democrats permitted voters to participate if they declared themselves Democrats on the day of the primary and had not declared themselves Republicans during the previous 30 days. Needless to say, this was confusing for voters and election officials.

Representatives of local clerks say that one result was that election inspectors were subject to considerable verbal abuse from angry voters. Many people believe that Michigan should return to an open presidential primary, one in which voters do not have to record their party preferences, and in which any registered voter can appear on the day of the primary and vote in the primary of whatever party they choose (even if he or she is officially enrolled in another party).

THE CONTENT OF THE BILL:

Currently, under the Michigan Election Law, an elector must declare a party preference within 30 days of a presidential primary election to be eligible to vote in that election and then can only vote for a candidate of that party. An elector's party preference or non-party preference declaration is filed in the elector's precinct registration file, the master registration files, and the precinct registration list. House Bill 4435 would amend the election law to eliminate the party preference requirements (thus establishing an open presidential primary) and would delete references to the party preferences of voters from various sections of the act, including such references on registration documents. Except as otherwise provided, the presidential primary would be conducted under provisions governing the conduct of general primary elections.

The bill also would provide that upon notification by the secretary of state that he or she is on the list of potential presidential candidates, a candidate could file an affidavit indicating that his or her party identification is different from that in the notification or could file an affidavit indicating that he or she does not want his or her name printed on the presidential primary ballot. Also, the election law now requires that the portion of the national convention delegation that is uncommitted or committed to each candidate be equal, as near as is

House Bill 4435 (5-18-95)

practicable, to the proportion of the popular vote cast. Currently, this need only apply to votes cast as uncommitted or committed to a particular candidate if the total votes cast in that manner equals at least five percent. The bill would leave the percentage to the rules of the state political party.

(Section 620a of the election law says a political party must follow the state law regarding the selection of delegates to national conventions if it is required to do so by state or national political party rule. Otherwise, a requirement of the election law regarding delegate selection would not apply to a political party if it conflicted with a rule of the political party.)

MCL 168.495 et al.

FISCAL IMPLICATIONS:

The bill would have no fiscal impact on state or local government, according to the House Fiscal Agency. (Fiscal note dated 4-24-95)

ARGUMENTS:

For:

The current closed primary system alienates and disenfranchises many of the state's voters. Many people object to having to declare their party preference in registration documents (and some who do make the declaration resent it) in order to be able to participate in the selection of the nation's presidential candidates. It is a widely held view that voters ought to have the right to vote in whichever primary they want, in secret, without disclosing their preferences to their neighbors or government officials. The idea of a closed primary goes against the Midwestern tradition of independent voters. Many people find it offensive and undemocratic to exclude independent (non-party affiliated) voters from primaries or else compel them to declare a party preference. The extent of the dissatisfaction with the current system is such that neither party followed it in 1992, opting for less onerous (but different) approaches. This, in itself, was confusing for both voters and election officials. Alienation and anger among potential voters is not healthy for the political system. For example, clerks say some voters don't vote in the August state primary, believing they will once again be asked for party identification. Further, the brunt of the disgust and confusion expressed by voters is borne by local election officials, including election inspectors.

Local clerks are concerned about being able to recruit people to work as inspectors under such conditions.

While it will remain the case that how national convention delegates are to be selected will be up to the respective political parties, regardless of state election law, this bill will make it clear that it is the state's policy preference that candidates and delegates be chosen by means of a primary and that the primary should be an open one.

Response:

If there is to be a presidential primary, it ought to be acceptable to the major parties, given the state of the law on this matter. Party rules will govern. The Michigan Democratic State Central Committee unanimously adopted a two-part resolution on April 29, 1995, that said the party will allocate delegates for the 1996 national convention based on the state law currently in force (a primary requiring party declarations) or, if the law is subsequently changed to conflict with national party rules, based on a caucus system. If both parties are not in agreement with the election law, many of the problems election officials faced in 1992 will occur again despite passage of this bill.

Against:

It is entirely reasonable for a party's candidates to be chosen by members of the party and not by those who are not members and who may even be members of a rival party. Party rules are not aimed at disenfranchising voters but at protecting the integrity of a party's candidate choices. It should be noted that a presidential primary is not an election; no candidate is elected at the primary and no delegates are directly chosen. It is a preference poll. The public's dissatisfaction with a closed primary or a closed caucus grows out of a myth that this is an election that they have a right to participate in by virtue of being registered voters. These activities, however, are the means by which a political party makes decisions; they are internal party matters. A party should have the prerogative of deciding what process to use.

It should be noted that all a voter has to do to vote in a so-called closed primary is indicate party preference a month in advance. The preference can then be changed or eliminated immediately after the primary. What is so onerous, unfair, or difficult to understand about that? Maybe what is necessary is an educational effort to change voters' perceptions about the presidential primary.

POSITIONS:

The Department of State supports the bill. (5-17-95)

A representative of the Michigan Municipal Clerks Association testified in support of the bill. (5-17-95)

The Michigan Association of Clerks has indicated support for an open primary. (5-16-95)

The Michigan State AFL-CIO is opposed to the bill. (4-26-95)