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BILL



ANALYSIS

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House Bill 4435 (Substitute H-1 as reported without amendment)

Sponsor: Representative Ken Sikkema

House Committee: Local Government

Senate Committee: Government Operations

Date Completed: 5-30-95

RATIONALE

A presidential election will be held in 1996, preceded by presidential primary elections in which political parties will be selecting delegates to the national conventions that select their presidential candidates. How delegates are chosen 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. For the past two decades, the form of the presidential primary in Michigan has been in a state of flux, changing from an open primary method of selection, to a caucus system, to a closed primary system. (See BACKGROUND for a brief recent history of Michigan's presidential primary.) Currently, the Michigan Election Law requires a "closed" presidential primary system in Michigan; that is, a voter must declare a party preference in order to vote in a presidential primary, and he or she may vote only for that party's candidates. Under the Law, a voter who fails to record his or her party preference at least 30 days before the primary, or who indicates no party preference, is ineligible to vote in the primary. In the 1992 presidential primary, however, changes in Democratic and Republican party rules resulted in three different procedures for conducting the primary. Aside from the provisions of the Law noted above, which the Secretary of State's office had been following until the rules were changed, the Democratic party adopted a rule that allowed a voter to make a written declaration as a Democrat on election day and vote in the Democratic primary, as long as the voter had not been registered as a Republican 30 days before the primary. The Republican party adopted a rule that a voter, regardless of a previous declaration, could vote in the Republican primary without making a written declaration.

Many people feel that this situation has produced a great number of dissatisfied, alienated voters. It

has been suggested that the Law be amended to return Michigan to an open primary, so that voters could vote in either the Republican or the Democratic primary without declaring themselves a Democrat or Republican.

CONTENT

The bill would amend the Michigan Election Law to remove current provisions that require a voter to declare a party preference before being allowed to vote in a presidential primary; delete requirements that party preference be noted on various election documents; and prescribe the conditions under which a presidential primary candidate could clarify his or her party status and candidate status.

Currently, an election official in a presidential primary election may allow an elector to vote only if the elector's registration contains a declaration of party preference; the elector may vote only for a candidate of that party. If an elector is registered with no party preference, he or she may not vote. The bill would delete these provisions, and provide instead that, except as otherwise prescribed in the Election Law, a statewide presidential primary election would have to be conducted under the provisions of the Election Law that govern the conduct of general primary elections.

Currently, the Election Law requires that the voter registration application, the voter registration, and the local voter registration list all contain a space indicating a voter's declaration of party preference or no party preference. Further, the voter poll list maintained by the local election clerks must contain the name of the party ballot voted by an elector at a presidential primary. The bill would delete all of these provisions.

Currently, no later than the second Friday in December of the year before a presidential election, the Secretary of State must issue a list of the persons generally advocated by the national news media to be potential presidential candidates for each party; the State chairperson of each party for which an election will be held then must file with the Secretary of State a list of persons whom he or she considers potential candidates. The Secretary of State must notify each potential candidate on the lists of the provisions of the Election Law relating to presidential primary electors. The Secretary of State must cause to be printed on the ballot for the presidential primary under the appropriate political party heading the name of a presidential candidate notified by the Secretary of State who has filed an affidavit indicating his or her party preference and willingness to have his or her name printed on that party's ballot. The bill provides that a presidential candidate notified by the Secretary of State could file an affidavit with the Secretary of State indicating his or her party preference if different than the party preference contained in the notification, and the Secretary of State would have to cause that presidential candidate's name to be printed under the appropriate party heading on the ballot. A presidential candidate notified by the Secretary of State could file an affidavit with the Secretary of State indicating that he or she did not wish to have his or her name printed on the ballot, and the Secretary of State could not have that candidate's name printed on the ballot.

Currently, national convention delegates must be elected on a basis that insures that the proportion of the total national convention delegation that is uncommitted or is committed to each presidential candidate equals, as near as is practicable, the proportion of the popular vote that was cast as uncommitted or for each respective presidential candidate of the particular political party's total popular vote at the presidential primary election. The determination of these proportions may include only the votes cast as uncommitted, or for a particular presidential candidate, if the total vote cast as uncommitted, or for that particular presidential candidate, equals at least 5% of the total vote cast for all presidential candidates or as uncommitted for that political party at that election. The bill would eliminate the 5% requirement and instead leave the percentage determination to State party rules.

MCL 168.495 et al.

BACKGROUND

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, prior to the 1980 presidential election, the National Democratic Party adopted a rule 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 or to either the Democratic or the Republican convention in 1984. As a result of these actions, the Michigan Election Law was amended in 1983 to eliminate the presidential primary.

Eliminating the presidential primary resulted in both parties in Michigan choosing their party's nominee for President through party caucuses that selected delegates to their respective national conventions. This delegate selection process caused a great deal of negative publicity, particularly in the Republican party where competition for delegates among various candidates' supporters sparked a series of lawsuits and much ill will. There were numerous complaints that the caucus system in both major parties had become so complicated and confusing that it prevented the average person from effectively participating in the choosing of presidential candidates, and left the selection process open to manipulation by party officials.

This series of events preceded the adoption of Public Act 275 of 1988, which established the current closed presidential primary system, which both parties modified in the 1992 primary. (The parties may choose not to follow the Election Law regarding delegate selection. A provision in the Law states that a political party must follow State law pertaining to delegate selection if its

State or national party rules require it to follow State law; absent such a rule, a requirement of the Election Law regarding delegate selection does not apply if it conflicts with a rule of the political party.)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current closed presidential primary system has, in effect, disenfranchised a host of voters who refuse or simply feel too uncomfortable to register their party preference before voting. Before the 1992 presidential primary, many voters were angry and alienated, some to such a degree that on election day they missed voting for the first time in their lives. It has become clear that while some voters will register their party preference before voting, many feel that it is an intrusion on their right to a secret ballot, and simply will not divulge that information in order to be allowed to vote. While the parties, by rule, responded to this voter dissatisfaction, the response still required voters directly or inferentially to reveal their party preference. The Democrats allowed voters to vote in the Democratic primary if the voters registered as Democrats on election day; the Republicans allowed persons to vote in the Republican primary without making a party declaration. While the changes in party rules made it less likely that a registered voter would be turned away at the polls, the fact remained that an examination of voting records would reveal party's primary in which the person voted. What the voters of Michigan want is a return to the time-honored tradition of the secret ballot. The bill, by re-establishing an open primary, would fulfill that desire.

Supporting Argument

With three different formats allowed, the 1992 presidential primary was a mess--a mess that must be straightened out before 1996. The current closed primary system runs counter to democratic principals and caused a great deal of trouble for elections officials. Requiring voters, especially independents, to declare a party preference before allowing them to vote goes against the strong Midwestern tradition in which there are substantial percentages of independent voters as opposed to party regulars. Many persons, both independents and those who favor one party, were angered when they realized that they would not be allowed to vote unless they declared a party preference at least 30 days

before the election. The parties' last-minute rules changes only added confusion to the situation. Returning to an open primary, in which voters would feel free to participate without being labeled as a member of one party or another, is the proper thing to do for the voters.

Opposing Argument

Though the current primary system is obviously flawed, returning to an open primary format would produce a flawed solution. The National Democratic Party rule that prevents its members from recognizing the results of an open primary in the selection of delegates to the national nominating convention, likely will not be changed. In all likelihood the bill, by eliminating the closed primary and adopting an open primary, would result in a return to the caucus system for the Democratic party, and many people feel that the caucus system excludes voters to a greater degree than does the closed primary. In the past, the caucus system for selecting delegates resulted in bickering, lawsuits, and widespread discontent. Indeed, many felt that the caucus system was unsavory, conducive to manipulation by party bosses, and virtually meaningless to the average citizen. The systems of selection in both parties were so confusing and convoluted that they actually became obstacles to participation by voters who were not connected to any party, thus minimizing the role of the State's voters in naming party presidential candidates.

In addition, if the bill caused the Democratic party to adopt a caucus system for delegate selection, and the Republican party went ahead with the "open" election, the voters would once again be confronted with a confusing choice, which would further discourage participation and result in low voter participation. By returning to an open primary, the bill could have the effect of closing the selection process, rather than opening it.

Response: Opponents of open primaries cite numerous reasons why one won't work, or how nothing can be done. But something can be done; the State can do what the citizens want and return to an open primary. Passing the bill would send a strong message that the people of Michigan want unfettered voting. Once that principal was established, it would become the parties' problem of how to deal with primary election results. Passing this now would give the parties ample notice of what to expect in this State. The parties could accept the results of the voters' choices, grant a waiver from any rule that forbids recognition of open primary results, or ignore the results. As has been shown, neither the caucus system nor the closed primary has been a success

and each has, in fact, caused plenty of confusion. Returning to an open primary, if nothing else, would show the national parties the wishes of Michigan's voters.

Opposing Argument

The caucus system, while much maligned, is preferable to the closed primary, or the open 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.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would result in savings to the State. The State currently reimburses cities and townships for sending out registration cards solely for the purpose of party declaration. The Department of State estimates annual costs at \$70,000.

Fiscal Analyst: B. Bowerman

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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.