Senate Bill 624 (as enacted)
Sponsor: Senator Michelle A. McManus
Senate Committee: Campaign and Election Oversight
House Committee: Ethics and Elections

Date Completed: 9-11-07

Rationale

Candidates for U.S. President are nominated by delegates to a political party's national convention. Delegates are selected within each state and support a particular candidate. The way delegates are chosen is typically a matter dealt with in state election law, but national party rules take precedence when they conflict with state law. In recent elections, Republicans selected their delegates in the Michigan presidential primary, which under previous statute was an "open" primary (one in which any elector may vote). Democrats used a caucus system to select delegates, as an open primary is contrary to national Democratic Party rules. (While a presidential primary is governed by State law and paid for by the State, a caucus is run according to political party rules and is paid for by the party.) Under the Michigan Election Law, a statewide presidential primary election was required to be held on the fourth Tuesday in February of each presidential election year. This meant that a statewide presidential primary was scheduled for February 26, 2008.

Some people considered Michigan's presidential primary problematic for two reasons. First, as noted above, national Democratic Party rules prohibit state Democratic parties from participating in open primaries. Second, many people believed that February 26 would be too late in the national primary season to give Michigan voters enough input on the presidential nominating process in 2008. Because a growing number of states are moving their primaries to early in the year, many to February 5 or before, there were concerns that Michigan's potential influence on the process would diminish.

In order to increase Michigan voters' influence in choosing the candidates for the 2008 presidential election, and to include both major political parties, some suggested that Michigan hold a statewide closed presidential primary on January 15, 2008.

Content

The bill amended the Michigan Election Law to do the following:

-- Require a statewide presidential primary on January 15, 2008, unless all of the participating political parties will be using another method to select their delegates.
-- Require an elector to select a participating political party ballot he or she wishes to vote.
-- Require the Secretary of State to prescribe procedures to ascertain an absent voter's ballot selection, and to safeguard confidentiality of the selection.
-- Allow a participating political party to use the elector ballot selection records only to support political party activities, and prescribe a misdemeanor penalty for a violation.
-- Change the February regular election date in 2008 to coincide with a presidential primary.
-- Require a party to have received at least 25% of the total vote cast in the State, rather than 5% of the total vote cast in the nation, for the office of President in the last presidential
election in order to participate in a statewide presidential primary.

-- Delete a requirement that the State compensate cities and townships for processing electors' designations of political party preference.

-- Repeal provisions pertaining to the selection of delegates to a State or national convention.

The bill took effect on September 5, 2007.

Presidential Primary Date

The bill requires a presidential primary to be conducted on January 15, 2008, unless the Secretary of State cancels it because all participating political parties will be using another method to select their delegates (as described below). A presidential primary must be held on the fourth Tuesday in February in each following presidential election year.

Under the bill, by 4 p.m. on November 14, 2007, the chairperson of each participating political party must notify the Secretary of State if his or her party will be using a method other than the results of the January 15, 2008, presidential primary to select delegates to his or her respective national convention to nominate a candidate for President of the United States in 2008. At 4 p.m. on November 15, 2007, the Secretary of State must determine, based on the information provided by the participating political parties, whether the participating political parties in Michigan will be using a method other than the results of the January 15, 2008, presidential primary to select delegates to their respective national conventions to nominate a candidate for President of the United States in 2008. If he or she determines that all participating political parties will be using a method other than the presidential primary, the Secretary of State must cancel the presidential primary that otherwise would be held on January 15, 2008, and any ballots for that presidential primary must be destroyed. Upon request, the chairpersons of the participating political parties must provide the Secretary of State with the information necessary for him or her to make this determination.

The bill defines "participating political party" as a political party authorized to participate in a presidential primary under the Law. "Presidential election year" means a calendar year in which the number of the year is a multiple of four. "Presidential primary" means a statewide primary election held for participating political parties in each presidential year under the Law.

Participating Political Parties

Previously, a political party that received less than 5% of the total vote cast nationwide for the office of President in the last presidential election could not participate in the statewide presidential primary election. The bill increased the percentage to 20% and refers to the total vote cast in this State, rather than nationwide, for the office of President in the last election.

The bill specifies that nothing in Section 613a or Sections 614a to 616a may be interpreted to diminish or impair the State and Federal constitutional rights of a participating political party or give the State, its political subdivisions and agencies, or its courts jurisdiction or authority over the application or interpretation by a participating political party of the party's State or national rules, regulations, policies, and procedures. Each party is the sole and exclusive arbiter of the application and interpretation of its State and national rules, regulations, policies, and procedures. (Sections 613a and 614a to 616a pertain to the primary date, the cancellation of the 2008 primary, the delegate selection process, lists of candidates, presidential primary ballots, voters' primary selections, and the canvassing and certification of statewide and congressional district results.)

Ballot Selection: Records

Under the bill, in order to vote at a presidential primary, an elector must indicate in writing, on a form prescribed by the Secretary of State, which participating political party ballot he or she wishes to vote when appearing to vote at a presidential primary. In fulfilling these requirements, the Secretary of State must prescribe procedures intended to protect or safeguard the confidentiality of the participating political party ballot selected by an elector.

An elector may not be challenged at a presidential primary based solely upon the participating political party ballot he or she
selected. An elector may be challenged only to the extent authorized under Section 727. (Under Section 727, an election inspector must challenge an applicant for a ballot if the inspector knows or has good reason to suspect that the applicant is not a qualified and registered elector of the precinct, or if a challenge appears in connection with the applicant's name in the registration book. A registered elector of the precinct present in the polling place may challenge the right of anyone attempting to vote if the elector knows or has good reason to suspect that the individual is not a registered elector in that precinct. An election inspector or other qualified challenger also may challenge the right of an individual attempting to vote who has previously applied for an absent voter ballot and who on election day is claiming to have never received the absent voter ballot or to have lost or destroyed it.)

Except as otherwise provided in the bill, the information acquired or in the possession of a public body indicating which participating political party primary ballot an elector selected is confidential and exempt from disclosure under the Freedom of Information Act, and may not be disclosed to any person for any reason.

The bill requires the Secretary of State to develop a procedure for city and township clerks to use when keeping a separate record at a presidential primary election that contains the printed name, address, and qualified voter file number of each elector and the participating political party primary ballot selected by that elector.

To ensure compliance with the State and national political party rules of each participating political party and with these provisions, the Secretary of State also must provide to the chairperson of each participating political party a file of these records, within 71 days after the presidential primary. The Secretary of State must set a schedule for county, city, and township clerks to submit the required data or documents. Immediately after the 22-month Federal election records retention period expires, the Secretary of State and local clerks must destroy the recorded information indicating which presidential primary ballot each elector selected.

Except as described below, a participating political party may not use the information indicating which presidential primary ballot each elector selected for any purpose, including a commercial purpose, and may not release the information to any other person, organization, or vendor.

A participating political party may use the information transmitted under these provisions only to support political party activities by that participating political party, including support for or opposition to candidates and ballot proposals. A party may release the information to another person, organization, or vendor for the purpose of supporting political party activities, including support for or opposition to candidates or ballot proposals.

A participating political party that releases the information to another person, organization, or vendor as authorized must enter into a contract with the person, organization, or vendor. The participating political party must retain the contract for six years from the effective date of the contract or any amendment to it. The contract must do all of the following:

-- State the information use restrictions imposed by the bill.
-- Specify how and when the information will be used.
-- Prohibit the donation, use, or sale of the information for any purpose other than a purpose authorized under the bill.
-- Prohibit the retention of the information after authorized use.
-- Describe the criminal penalties provided for misuse.

Any person who uses the information indicating which participating political party primary ballot an elector selected for an unauthorized purpose is guilty of a misdemeanor punishable by a fine of $1,000 for each voter record that is improperly used or imprisonment for up to 93 days, or both.

Absent Voter Party Selection

Under the bill, for a presidential primary, the Secretary of State must prescribe procedures for contacting an elector who is a member of the Armed Services or an overseas voter, as described in the Law, and who is eligible to receive an absent voter ballot or who applies for an absent voter ballot for the presidential primary, offering the elector the opportunity to select a