

- SUBJECT:** Moving primary election date to the first Tuesday in February
- COMMITTEE:** Elections — committee substitute recommended
- VOTE:** 7 ayes — Berman, Bohac, England, Anchia, Burnam, Farias, C. Howard
0 nays
- WITNESSES:** For — Ken Bailey, Texas Democratic Party; Jeff Fisher; Glen Maxey; Skipper Wallace, Texas Republican County Chairmans Association; (*Registered, but did not testify:* Paula Littles, Texas AFL-CIO; Garland Pruitt)

Against — George Hammerlein, Harris County Tax Office; (*Registered, but did not testify:* Suzy Woodford, Common Cause Texas)

On — Don Alexander; Dana DeBeauvoir, County and District Clerks Legislative Committee; Steve Raborn, Tarrant County Elections; Elizabeth Hanshaw Winn, Office of the Secretary of State
- BACKGROUND:** Under Election Code, sec. 41.007, the general primary date is the first Tuesday in March in even-numbered years and the presidential primary is on the same date in presidential election years. The runoff primary date is the second Tuesday in April. The filing deadline for primary elections is January 2, and an application for candidacy, other than an application for the office of precinct chair, cannot earlier than 30 days before that date.

In elections from 1988 to 2004, the primary election date was the second Tuesday in March. In elections from 1960 to 1986, the general primary election was the first Saturday in May. The runoff was the first Saturday in June, and the filing deadline was the first Monday in February. Presidential party nominations and all delegate selection were through political party conventions.

Under the presidential primary law enacted in 1986, a political party in Texas must hold a presidential primary in order to have its presidential and vice-presidential candidates on the November ballot if that party nominates its state and county candidates by primary election, if its national party authorizes presidential primaries, and if by January 1, its

national party decides that it will hold a presidential nomination convention.

Each political party in the state holding a primary election determines by rule how delegates are allocated based on the presidential primary results. At least 75 percent of the total number of delegates to the party's national nominating convention, excluding delegates allocated among party and elected officials, must be allocated among one or more of the candidates in accordance with party rule based on the presidential primary results. The Texas Democratic Party allocates 25 percent of its national convention delegates among candidates by the convention system, based the "sign in" presidential preferences of delegates to the precinct, county/state senatorial, and state party conventions. The Republican Party of Texas, by rule, allocates essentially all of its national convention delegates according to presidential primary results in each congressional district.

DIGEST:

CSHB 2017 would change the presidential primary and general primary date to the first Tuesday in February and the runoff primary election date to the second Tuesday in March. The filing deadline for placement on the general primary election ballot would be not later than 6 p.m. on October 31 in the odd-numbered year preceding the general primary election day, and the application for filing would begin after 8 a.m. on October 1 in that odd-numbered year.

The bill would add a provision to the current requirements for a candidate's application for a place on the ballot to include a statement that the candidate was aware of the provisions of Texas Constitution, Art. 16, sec. 65 relating to certain terms of office exceeding one year and automatic resignation upon announcement of candidacy for another office. CSHB 2017 would direct the secretary of state to furnish rules on primary election expenses to the state chair and each county chair of each political party during September, rather than November, preceding each primary election year.

The bill would specify that an application for a place on the ballot for the general primary election would have to be challenged for compliance with the applicable requirements as to form, content, and procedure not later than the 15th day after the filing deadline. A candidate in the general primary election could be declared ineligible not later than 15 days after the date of the regular filing deadline by the authority with which the candidate's application was required to be filed.

A person would affiliate with a political party when the person applied for an early voting or limited primary mail ballot or was accepted to vote in the party's primary election, and that affiliation would be for the voting year in which the primary election was held.

The term for a person serving as county or precinct chair when the bill took effect would end 20 days after the second Tuesday in March 2008.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2017 would move up the presidential primary election and the general primary election from the first Tuesday in March to the first Tuesday in February to allow Texans to have meaningful input in choosing the presidential nominees for both major political parties. The bill represents a bipartisan effort among House members, the Texas Democratic Party, and the Republican Party of Texas. Giving Texas a stronger voice in selecting the next president would benefit all voters, regardless of political affiliation.

Nine other states have moved their presidential primaries to the first Tuesday in February, while 14 other states, including Texas, have proposed changes to move their presidential primaries to that date. As the law is now, the Texas primary will be March 4, 2008. With the nominating process becoming more frontloaded, the presidential nominees could be decided before the race ever reaches this state.

Texas should play a significant role in the presidential nominating process because of the size of its delegate pool. Our state has the second-highest delegate total to the Republican National Convention and the third-highest total of delegates to the Democratic National Convention. By keeping the presidential primary in March, we should not place our delegates in a mostly symbolic role.

The demographic composition of this state is what our country will look like in 20 years, but primary states resembling the past determine the future of our nation. We should not continue to yield the interests of Texas to unrepresentative states like New Hampshire, Iowa, and South Carolina.

Provisions in CSHB 2017 to move the filing deadline to October 31 would accommodate county clerks and election administrators who had concerns related to the December 1st — 65 days prior to the general primary election — filing deadline in the introduced version. Election officials were uneasy as to whether they could adequately purge voter roles, issue new voter registration cards, and handle administrative duties related to candidates' filing all around the same time. The fiscal note for additional administrative expenses would be relatively small and could be absorbed by the political parties if there were no appropriation.

Advancing the primary date by only a month would not inconvenience candidates or give incumbents an advantage. Challengers usually are prepared to run long before the filing date, whenever it may be. Separating the presidential and general primary dates as some states do would be prohibitively expensive and would mean voters who wanted to choose a candidate in one party's presidential primary would be barred from voting for state and local candidates in the other party's primary in a subsequent election. Shifting the primary dates back and forth between presidential and non-presidential years would cause voter confusion.

OPPONENTS
SAY:

Because as many as 23 states representing more than a majority of convention delegates could choose their party's presidential nominee on February 5, 2008, CSHB 2017 could cause that primary date to become a national referendum and give too much of an advantage to the front-running candidates who are better known and better financed. With so many large states, including California, New York, and possibly Texas, conducting presidential primaries on one day, candidates could not campaign in the "retail" fashion associated with early presidential primaries, making personal appearances and engaging in single-state debates. Instead, the proposed February 5 primary would be more like a de facto general election, with candidates having to rely more heavily on television advertising and direct mail to reach voters. The candidate with the most campaign money would have the biggest advantage — more than customary in a presidential primary.

Several nationally recognized presidential campaign experts and pundits for both political parties concur that the concentration of such a large number of states conducting presidential primaries on February 5 could have the opposite effect of the one intended. A February 5 "super duper" Tuesday could make the outcome of earlier primaries in states like Iowa and New Hampshire even more significant because voters would not have

adequate time to assess candidates and could be influenced easily by the national media and voter sway in these earlier state primaries and caucuses.

Another scenario would be that no single candidate could emerge on the first Tuesday in February. Quite possibly, two well-funded front runners could be deadlocked after February 5, perhaps allowing a smaller-populated state to determine the frontrunner at a later time. Regardless of the primary outcome, the early February presidential primary would make the period before the general election of unprecedented length – nine full months, in which candidates would have a hard time avoiding voter apathy.

In 1976, Ronald Reagan had lost 11 prior primaries before winning all the Texas Republican delegates in the Texas primary held on the first Saturday in May. While Reagan ultimately did not overtake President Ford's lead, his Texas win later in the process gave him the momentum that kept the race for delegates close all the way to the convention. With highly competitive races in both parties in 2008, the later state primaries could well decide the nominee and gain national attention and influence.

The Legislature should give serious thought to whether it should move the filing deadline to Halloween, more than a year before the general election. Residency for candidates for the Legislature is determined as of a year before the general election. By requiring candidates to file beginning October 1 of an odd-numbered year, a candidate could file to run in any district simply by declaring residency intent as of the date of the filing deadline. As long as the candidate maintained residency from a year before the general election, a residency challenge may be difficult to sustain. Under current law, a candidate has to establish residency before filing because one year before the general election occurs before the filing period begins in early December.

CSHB 2017 would distort the election process with primary election campaigns competing with the Thanksgiving and Christmas holidays for voter attention. In trying to grab the attention and influence of presidential candidates, Texas could compromise the interest of its voters in congressional, state, and local elections.

OTHER
OPPONENTS
SAY:

A sound alternative to moving both the presidential primary and the party primaries to the first Tuesday in February would be to have split primary election dates. Most of the states that have enacted or are considering a presidential primary election on the first Tuesday in February have dual primaries. If the Legislature wanted the presidential primary moved up, nothing would keep it from setting the general primary election date later.

Shortening the time between the general primary election and the general election would help sustain voter interest and keep election costs more reasonable, particularly for down-ballot races. Admittedly, this would be a cost to the state, but cost factors have not been the sole determinant in setting referenda on constitutional amendments. In recent years, those elections have not always coincided with November general elections. The overall benefit to the voting public and the state would outweigh any cost considerations.

NOTES:

The committee substitute differs from the bill as filed by moving the filing deadline to October 31 from January 2. The time at which candidates could begin to file applications would begin October 1, instead of 65 days prior to the general election primary as in current law. The substitute also would require the Secretary of State to distribute rules related to primary expenses to political party officials in September rather than October as in the original bill.

The companion bill, SB 1843 by West, has been referred to the Senate State Affairs Committee.

According to the Legislative Budget Board, CSHB 2017 would cost the state approximately \$308,000 in general revenue-related funds in each biennium to offset an additional month of administrative expenses due to a longer filing period. These expenses would be borne by the county political parties. Currently, the secretary of state is authorized by statute, Election Code sec. 173.001, to reimburse these expenses subject to legislative appropriation.