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The National Popular Vote Interstate Compact in Michigan

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Introduction

In recent years, election reforms have been debated throughout the country. In 2022, Michigan voters passed Proposal 2, an amendment to the Michigan Constitution that requires at least nine days of early in-person voting for each Federal and statewide election, prepaid postage and ballot tracking for absent voter ballots, and at least one absent voter ballot drop box for each municipality, among other reforms. The Michigan Legislature also enacted Public Act 2 of 2023, which moved Michigan's presidential primary date from the second Tuesday in March to February 27, 2024, and to the fourth Tuesday in February during each presidential election year thereafter. In addition to these reforms, the 2023-24 Michigan Legislature has introduced several other elections bills; two of these concern the National Popular Vote Interstate Compact (NPVIC), which would change how presidential electors are distributed nationwide.

Currently, there are two methods of distributing electors in use. Maine and Nebraska use the district method, which divides each state into several congressional districts and awards an elector to the presidential nominee who wins the elector's district. Most states (including Michigan), however, use the winner-take-all system. In this system, each major political party nominates a slate of electors pledged to the party's respective presidential and vice-presidential nominee. After statewide election results are tallied, the slate of electors attached to the winning candidate are elected together to cast their votes. The ticket that receives 270 Electoral College votes wins the presidency, even if the ticket does not win the popular vote. Five presidents have been elected in this manner.

Under the NPVIC, instead of pledging to vote for the candidate that won the popular vote in his or her state, an elector would pledge to vote for the candidate that won the popular vote nationwide. The Compact would be binding only after the total electoral votes possessed by Compact members reached 270 (a majority of the 538 electoral votes, defined as half plus one). As of December 2023, 16 states and Washington, DC, have entered the Compact, for a total of 205 electoral votes. The most recent state to join was Minnesota in May 2023. That same month, the Nevada Legislature passed Assembly Joint Resolution 6, which would amend the Nevada State Constitution to include the NPVIC. However, the Nevada Constitution requires the Legislature to vote on any constitutional amendment during the next consecutive biennial session (i.e., 2025-2026). If the Legislature votes in favor of it, the amendment will have to be placed on the 2026 midterm election ballot for voters to approve.¹

With 205 electoral votes, the Compact needs only 65 more before it will go into effect. Legislation supporting entrance into the NPVIC was introduced in 11 other states during the 2023 session, including in Michigan.

Content

During the 2023-2024 Legislative Session, Senator Stephanie Chang introduced Senate Bill 126 and Representative Carrie Rheingans introduced House Bill 4156; these bills would enact the NPVIC in Michigan. Each bill would take effect 90 days after its enactment. If enacted, Michigan would contribute its 15 electoral votes, increasing to 220 the total number of Electoral College votes possessed by Compact member states.

¹ NV Const. art. 16 § 1, cl. 1.

The bills lay out how the NPVIC would work in Michigan once the Compact was enacted as follows:

At least six days before the meeting of the presidential electors (i.e., the first Monday after the second Wednesday in December),² the State's chief election official, the Board of State Canvassers, would have to make a final determination of the number of votes cast for each presidential slate in the State. The State would have to communicate its determination to the other member states. The sum of these votes would produce a "national popular vote total" for each presidential slate nationwide. The slate that received the largest vote total would be declared the national popular vote winner. The Board of State Canvassers would have to immediately release all vote counts or related documentation to the public.

Michigan's presidential elector-certifying official, the Governor, would have to honor this determination and approve the electors pledged to the presidential candidate who received the most votes nationwide.

In the case of a tie for the national popular vote winner, Michigan would appoint electors pledged to the candidate who won the *statewide* popular vote. If the number of presidential electors nominated in Michigan to represent the national popular vote winner did not match the State's number of allocated electoral votes, then the national popular vote winner could nominate Michigan's electors. The Governor would have to certify the appointment of those electors.

The State could withdraw from the Compact at any time; however, a withdrawal occurring within six months of the end of a president's term (between July 20 and January 20) generally could not take effect until that term ended.

House Bill 4440 is tie-barred to House Bill 4156 and specifies that the candidates for electors certified to the Secretary of State by the political party that won the national popular vote would be considered elected to their positions. Senate Bill 295 is a companion bill to House Bill 4440.

History of the NPVIC in Michigan

The Michigan Legislature is no stranger to legislation regarding the NPVIC. In 2008, Representative Steven Tobocman introduced House Bill 6610. The House of Representatives passed the bill and transmitted it to the Senate; however, the bill was never taken up. Legislation to enact the NPVIC also was introduced in the 2009-2010, 2013-2014, and 2015-2016 Legislative Sessions. The Senate Committee on Elections and Government Reform took testimony on Senate Bill 88 during the 2015-2016 Legislative Session but did not report it. In 2018, Senator David Hildenbrand introduced Senate Bill 1117, accompanied by Representative Tim Kelly's bill, House Bill 6323. The Senate Committee on Elections and Government Reform and the House Committee on Elections and Ethics took testimony on their respective bills but did not report them.

During the 2021-2022 Legislative Session, Representative Matt Koleszar introduced House Bill 5343. Around that time, a nonpartisan organization called Yes on the National Popular Vote, supported by former Michigan Democratic Party Chairman Mark Brewer and former Michigan Republican Party Chairman Saul Anuzis, announced its intention to gather signatures to place the NPVIC on a future ballot; however, in December 2021, the organization announced that it planned to halt the petition drive.³

Currently, Senate Bill 126 and House Bill 4156 represent the latest legislation to adopt the NPVIC. Senate Bill 126 was referred to the Senate Committee on Elections and Ethics. The House Committee on Elections took testimony on House Bill 4156 and reported it to the floor in June 2023.

² In October 2023, the Senate Committee on Elections and Ethics reported Senate Bill 529 to the floor. The bill would require the State's presidential electors to meet on the first Tuesday after the second Wednesday in December, among other reforms.

³ Oosting, Jonathan, "National Popular Vote compact won't make Michigan 2022 ballot", *Bridge Michigan*, December 16, 2021.