

JOIN NATIONAL POPULAR VOTE AGREEMENT

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House Bills 4156 and 4440 (H-1) as reported from committee

Sponsor: Rep. Carrie A. Rheingans

Committee: Elections

Complete to 10-1-24

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Together, House Bills 4156 and 4440 would enter Michigan into the Agreement Among the States to Elect the President by National Popular Vote, also known as the National Popular Vote (NPV) Compact.¹ House Bill 4156 would enact the compact—under which states pledge to allocate their electoral votes to whoever wins the *nationwide*, rather than *statewide*, popular vote—into law, and House Bill 4440 would make complementary changes to the Michigan Election Law to reflect the selection and certification of presidential electors under the National Popular Vote Compact.

FISCAL IMPACT: The bills would have no fiscal impact on the Department of State or local units of government. The department would require no additional resources to collect or share information as required by the bill.

THE APPARENT PROBLEM:

In most elections for public offices, the candidate who receives the most votes wins. This does not apply, however, to elections for President of the United States, where candidates compete to earn the most Electoral College votes under a statewide “winner takes all” system. Many believe that this process disenfranchises American voters, as a candidate has won the presidency despite losing the popular vote five times throughout the nation’s history. The current system also incentivizes campaigns to focus on a small number of battleground states (including Michigan), as candidates will not spend time or money in a state where the result will not be close. As a result, voters in “safe” states often do not have the opportunity to personally hear from the candidates, despite composing a majority of the electorate. Because of these concerns, some believe reforms are necessary to change how states allocate their presidential electors.

THE CONTENT OF THE BILLS:

House Bill 4156 would enter Michigan into the Agreement Among the States to Elect the President by National Popular Vote.

Under the bill, the agreement itself would be enacted into Michigan law. Currently, 17 states and the District of Columbia—together representing 209 electoral votes—have signed on to the compact.² (See **Background**, below.)

¹ The National Popular Vote organization offers more information on the agreement, which can be found here: <https://www.nationalpopularvote.com/bill-text>.

² For purposes of the agreement (and this summary), “state” includes the District of Columbia and its three electoral votes.

If enough states join, the presidential candidate receiving the most votes nationwide will receive all electoral votes from member states and will thus be guaranteed enough votes to become president.

Current practice

The Electoral College, which since 1964 has had 538 electors, is a form of indirect election, an idea referenced in the U.S. Constitution and originated when the framers were wary of giving the people the power to elect the president directly. As an indirect election, voters elect not the person running for president but instead an elector who is pledged to vote for a specific person for president. The U.S. Constitution (in Section 1 of Article II and in the Twelfth Amendment) allows the states, through their legislatures, to determine how the electoral votes within a state are assigned.

Forty-eight states have a “winner takes all” system. Two—Nebraska and Maine—award their Electoral College votes based on the popular vote in their congressional districts. Michigan is a “winner takes all” state, so the presidential slate receiving the highest number of popular votes is assigned all 15 of the state’s electoral votes. Then, when the Electoral College electors convene, all 15 Electoral College votes go to the winner of the state’s popular vote.

Proposed popular vote

Enactment of the bill would enter Michigan into the National Popular Vote Compact, which would replace the current practice for electing the president and vice president if states representing 270 electoral votes collectively entered into it. If it took effect, each member state would conduct a statewide popular election for president and vice president (who together compose a “presidential slate”), as is currently done. However, the bill would change the way those votes would determine who won the presidency. At least six days before the meeting of the presidential electors, the *chief election official* of each state would make a final determination of the number of votes cast for each presidential slate in their respective state.³ Each member state would communicate its determination to the other member states, and, added together, those votes would produce a “national popular vote total” for each presidential slate. The slate receiving the largest vote total would be declared the national popular vote winner. Chief election officials would be required to immediately release all vote counts or related documentation to the public.

Chief election official would mean the official or body responsible for certifying the number of votes received by each presidential ticket. In Michigan, the chief election official would be the Board of State Canvassers.⁴

The *presidential elector certifying officials* of each member state would then be required to honor this determination and approve the electors pledged to the presidential candidate who received the most votes nationwide.

³ This is the “safe harbor” deadline required by federal law for states to have resolved any controversies over the appointment of electors before those electors meet in their respective states:
<https://www.govinfo.gov/content/pkg/USCODE-2021-title3/pdf/USCODE-2021-title3-chap1-sec5.pdf>. Electors meet on the first Tuesday after the second Wednesday in December.

⁴ <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-168-841.pdf>.

Presidential elector certifying official would mean the official or body authorized to certify the appointment of a state’s presidential electors. In Michigan, this official would be the governor.⁵

In the case of a tie for the national popular vote winner, then each member state would appoint electors pledged to the candidate that won the popular vote in that state. (This is the “winner takes all” system currently used by most states.)

If the number of presidential electors nominated in a member state to represent the national popular vote winner did not match that state’s number of allocated electoral votes, then the winning candidate of the national popular vote could nominate the electors for that state, and the state’s certifying official would be required to certify the appointment of those electors.⁶

NPV in Michigan

The bill would state that it is the public policy of the state of Michigan that the one-person, one-vote principle requires that the candidate who receives the most votes nationwide should become the President of the United States.

The Board of State Canvassers would be required to designate the slate of presidential electors that received the most votes nationwide as the national popular vote winner, and the governor would be required to certify these electors to the United States Secretary of State as Michigan’s elector slate. In the event of a tie for the national popular vote winner, the governor would certify the slate of whichever candidate received the most votes in Michigan.

The bill would be considered effective in Michigan 90 days after it is enacted. Once the compact reached the 270-vote threshold and went into effect, it would take precedence over any conflicting state law.

Enactment and withdrawal

The agreement would be operational if it has been enacted in substantially the same form by states that possess a majority of the total Electoral College votes by July 20 of a presidential election year. A state’s electoral vote allocation would not be counted until the law entering the agreement has gone into effect.

Member states could withdraw from the agreement at any time, but withdrawals that occur within six months of the end of a president’s term (between July 20 and January 20) generally could not take effect until the term ended.⁷

Governors (or the mayor of D.C., when applicable) would be required to provide notice to all other states when the compact has taken effect in their state, when their state’s withdrawal has taken effect, and when the compact has taken effect generally.

⁵ <http://www.legislature.mi.gov/documents/mcl/pdf/mcl-168-46.pdf>.

⁶ According to the National Popular Vote organization, this provision ensures that the national popular vote winner would receive all electoral votes from a member state, despite any potential ambiguities in state law.

⁷ A presidential term ends on January 20, but the compact requires that withdrawals within this window cannot go into effect until a president or vice president is “qualified to serve the next term” in accordance with section 3 of the Twentieth Amendment, even if that occurs after the end of a presidential term.

If any provision of the compact were held to be invalid, the remaining provisions would not be affected. The agreement would terminate if the Electoral College were abolished.

House Bill 4440 would amend the Michigan Election Law to reflect changes to Michigan's presidential election process that would be made by entering into the National Popular Vote Compact. The bill is tie-barred to House Bill 4156.

Under the bill, if the compact becomes effective, then the electors representing the political party of the presidential candidate that won the national popular vote would be considered Michigan's presidential electors under the Michigan Election Law. The provisions described below would apply only if the National Popular Vote Compact governs how Michigan's presidential electors are appointed.

As soon as practicable after completing its canvass and determination, the Board of State Canvassers (BSC) would have to make a final determination of the number of popular votes cast in Michigan for each presidential slate.⁸ The BSC would have to communicate an official statement of the final determination to the chief election officials of each other NPV member state within 24 hours of making the final determination. As soon as practicable, the BSC would then determine the number of votes received by each presidential slate in each state, add the votes together to determine a national popular vote total for each slate, and certify the determination as the NPV total for each slate. The BSC would have to designate and certify the presidential slate receiving the largest NPV total as the national popular vote winner and transmit the certifications to the Michigan secretary of state and the governor.⁹ (In the case of a tie for the largest NPV total among multiple presidential slates, the BSC would certify that there is a tie for the NPV winner.)

As soon as practicable after the BSC's certification, the governor would have to certify the appointment of the elector slate associated with the NPV winner as Michigan's presidential electors. In the case of a tie for the NPV winner, the governor would instead certify the appointment of the slate associated with the statewide winner.

The governor would then have to issue a certificate of ascertainment of the appointment of electors that documents the BSC's certification and immediately transmit the certificate to the Archivist of the United States by the most expeditious delivery method available.

The certificate of ascertainment would have to include:

- The names of the electors of the state who are certified and appointed as Michigan's electors for President and Vice President of the United States.
- If there is not a tie for the NPV winner, an indication that the electors are associated with the presidential slate certified as the NPV winner and the total number of popular votes for that slate.
- If there is a tie, an indication that the electors are associated with the presidential slate determined to have received the most votes statewide and the total number of popular votes for that slate.

⁸ The Michigan Election Law requires the canvass to be completed by the twentieth day after an election.

⁹ The outcome would have to be determined solely by the vote totals.

- The names of the candidates for electors associated with each other presidential slate and the NPV and state totals for each of those presidential slates.
- The Great Seal.
- At least one security feature to verify the authenticity of the certificate, as determined by the governor.

The process would have to be completed at least six days before the presidential electors convene (the “safe harbor” deadline). As soon as practicable, but no later than the date that the electors convene, the governor would have to transmit six duplicate-originals of the certificate of ascertainment to Michigan’s certified electors and one duplicate-original to the secretary of state.

MCL 168.42

BACKGROUND INFORMATION:

The NPV compact has been enacted into law in 17 states—California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington—and the District of Columbia.¹⁰ If Michigan joined the compact and all current member states remained, the agreement would need approval in states possessing at least 46 electoral votes before it could take effect.

In 2008, the House considered and passed a bill that would have entered Michigan into the compact. House Bill 6610 of 2008 was passed by the full House on December 11, 2008, and was not considered by the Senate.¹¹ Another bill was introduced in 2018 that received testimony in the House Elections and Ethics committee but did not advance.¹² Other bills have been introduced since 2008 in both the House and Senate but have not moved beyond their respective committees.

ARGUMENTS:

For:

Supporters of the bills argue that the National Popular Vote Compact works within constitutional constraints to ensure that the presidential candidate who receives the most votes wins, and that transitioning away from the current “winner takes all” system would increase voter turnout. NPV advocates note that too few Americans live in big cities for campaigns to rely on turnout in urban areas alone, so presidential candidates would be incentivized to listen to citizens of all backgrounds. They believe that under the NPV agreement, candidates would have to campaign in every state to win, which would give voters greater confidence that their vote matters.

¹⁰ An overview of other states’ NPV status as of April 2024 can be found here: <https://www.ncsl.org/elections-and-campaigns/national-popular-vote>.

¹¹ A summary of House Bill 6610 of the 2007-08 legislative session can be found here: <http://www.legislature.mi.gov/documents/2007-2008/billanalysis/House/pdf/2007-HLA-6610-3.pdf>.

¹² A summary of House Bill 6323 of the 2017-18 legislative session can be found here: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6323-DA9E59DA.pdf>.

Against:

Opponents raise concerns that the National Popular Vote Compact would cause candidates to ignore Michigan, a crucial battleground state, and instead focus on large population centers. They also suggest that the compact could disenfranchise Michigan voters: if, for example, every person in the state voted for one candidate but another candidate won the national popular vote, all of Michigan's electors would be allocated to a candidate that not a single person in the state voted for. Additionally, opponents argue that the compact lacks sufficient clarity regarding compatibility with alternative methods of election (such as ranked choice voting), avenues to address disputed state-level results, and consistency in vote counting procedures between member states.

POSITIONS:

A representative of Pride at Work Michigan testified in support of the bills. (6-6-23)

Representatives of the following entities testified in support of House Bill 4156 (3-7-23):

- American Civil Liberties Union of Michigan
- Common Cause Michigan
- Conservatives for National Popular Vote
- League of Women Voters
- Mothering Justice
- National Popular Vote

The following entities indicated support for the bills (6-6-23):

- Michigan Democratic Party
- Michigan League of Conservation Voters
- NextGen America
- Voters Not Politicians

The following entities indicated support for House Bill 4156 (3-7-23):

- Michigan Department of State
- Clean Water Action

Representatives of the following entities testified in opposition to House Bill 4156 (3-7-23):

- Keep Our 50 States
- Pure Integrity for Michigan Elections
- Save Our States

The following entities indicated opposition to the bills:

- Democrats for the Electoral College (6-6-23)
- Heritage Action for America (3-7-23)

The following entities indicated opposition to House Bill 4156 (3-7-23):

- Mackinac Center for Public Policy
- Michigan Farm Bureau

The following entities indicated opposition to House Bill 4440 (6-6-23):

- Keep Our 50 States
- Pure Integrity for Michigan Elections
- Save Our States

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.