

NATIONWIDE POPULAR VOTE INTERSTATE COMPACT

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<http://www.house.mi.gov/hfa>

House Bill 6323 as introduced
Sponsor: Rep. Tim Kelly
Committee: Elections and Ethics
Complete to 9-5-18

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

SUMMARY:

House Bill 6323 would create a new act to be known as the “Interstate Compact to Elect the President by National Popular Vote.”

Under the bill, the compact itself would be enacted into Michigan law. If states representing a majority of the electoral votes (at least 270) entered into the compact, it would replace the current practice for electing the president and vice president. Currently, 11 states and the District of Columbia—together representing 172 electoral votes—have signed on to the compact, pledging to allocate their electoral votes to whoever wins the nationwide, rather than statewide, popular vote.

Current practice

The Electoral College, which since 1964 has had 538 electors, is a form of indirect election, an idea referenced within the U.S. Constitution, and originated when the framers were wary of giving the people the power to directly elect the president. 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 16 of the state’s electoral votes. Then, when the Electoral College electors convene, all 16 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 compact, which would take effect if states representing 270 electoral votes collectively entered into the compact. If it took effect, as now, each member state would conduct a statewide popular election for president and vice president (who together compose a “presidential slate”).

However, the bill would change the way those votes would determine who won the presidency. Before the meeting of the presidential electors, Article III of the compact requires that the chief election official of each state—the Secretary of State (SOS) in Michigan—determine the number of votes cast for each presidential slate in each state of

the United States and in the District of Columbia in which votes have been cast in a statewide popular election. Added together, those votes would produce a “national popular vote total” for each slate. The slate receiving the largest vote total would be declared the “national popular vote winner,” so designated by the SOS.

Then the certifying official would certify the appointment of the electors pledged to the winning candidate (the candidate with the higher national popular vote total). At least six days before the presidential elector meeting, each member state would make a final determination of the number of popular votes cast in the state for each presidential slate, and then communicate that determination to the other member states. Under the compact, that communication would be considered conclusive.

If two candidates tied as the national popular vote winner, each state would appoint the electors pledged to the candidate receiving the most votes in that state.

If the number of presidential electors nominated in a member state were less or greater than the state’s number of electoral votes, the presidential candidate on the slate that had been designated as the national popular vote winner could nominate the presidential electors for that state, and that state’s certifying official would certify the appointment of those nominees.

The compact requires that the chief election official of each member state immediately release to the public all of the vote counts or statements of votes as they are determined or obtained.

Compact’s effective date; withdrawal from the compact

The compact would take effect when states cumulatively possessing a majority of the electoral votes have enacted the compact in substantially the same form and those enactments have taken effect. Any member state could withdraw from the compact. However, a withdrawal that occurred less than six months before the end of a president’s term would not become effective until after the election.

The chief executive of each member state would be required to notify the chief executive of all other states promptly of three events: when the compact had been enacted and taken effect; when the state had withdrawn from the compact; and when the compact took effect generally. The compact would terminate if the Electoral College were abolished.

If any provision of the compact were held to be invalid, the remaining provisions would not be affected.

Definitions

The compact defines *chief executive* to mean the governor of a state (or the mayor of the District of Columbia).

Elector slate would mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate.

Chief election official would mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate. [In Michigan, this is the SOS.]

Presidential elector certifying official would mean the state official or body that is authorized to certify the appointment of the state's presidential electors.

Statewide popular election would mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

For more information about the proposed compact, see the National Popular Vote interstate compact description: <https://www.nationalpopularvote.com/written-explanation>

BACKGROUND:

In 2008, the House considered and passed a bill that would have entered Michigan into the compact.¹ House Bill 6610 of 2008 was passed by the full House on December 11, 2008 and was not considered by the Senate. The compact has been enacted into law in 11 states—California, Connecticut, Hawaii, Illinois, Massachusetts, Maryland, New Jersey, New York, Rhode Island, Vermont, and Washington—and the District of Columbia. It has been considered and passed by at least one chamber in 13 other states.²

FISCAL IMPACT:

The bill would have no fiscal impact on the Department of State (DOS) or local units of government. DOS would require no additional resources to collect or share information as required by the bill.

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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.

¹ House Fiscal Agency analysis of House Bill 6610 of 2008: <http://www.legislature.mi.gov/documents/2007-2008/billanalysis/House/pdf/2007-HLA-6610-3.pdf>

² <https://www.nationalpopularvote.com/state-status>