

SELECTION OF PRESIDENTIAL ELECTORS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Election Code to enact an agreement among the states to elect the President of the United States by national popular vote.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that presidential electors are elected based on the presidential candidate

who receives the most popular votes in all 50 states and the District of Columbia rather than the presidential candidate who receives the highest number of votes in the state;

- ▶ enacts an agreement between states to elect the President and Vice President of the United States by national popular vote;

- ▶ provides certain procedures for election officials; and

- ▶ provides conditions for the agreement to take effect.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **20A-4-306**, as last amended by Laws of Utah 2011, Third Special Session, Chapter 2

29 **20A-13-301**, as last amended by Laws of Utah 2011, Third Special Session, Chapter 2

30 **20A-13-302**, as last amended by Laws of Utah 2001, Chapter 78

31 ENACTS:

32 **20A-13-401**, Utah Code Annotated 1953



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **20A-4-306** is amended to read:

36 **20A-4-306. Statewide canvass.**

37 (1) (a) The state board of canvassers shall convene:

38 (i) on the fourth Monday of November, at noon; or

39 (ii) at noon on the day following the receipt by the lieutenant governor of the last of the
40 returns of a statewide special election.

41 (b) The state auditor, the state treasurer, and the attorney general are the state board of
42 canvassers.

43 (c) Attendance of all members of the state board of canvassers shall be required to
44 constitute a quorum for conducting the canvass.

45 (2) (a) The state board of canvassers shall:

46 (i) meet in the lieutenant governor's office; and

47 (ii) compute and determine the vote for officers and for and against any ballot
48 propositions voted upon by the voters of the entire state or of two or more counties.

49 (b) The lieutenant governor, as secretary of the board shall file a report in his office
50 that details:

51 (i) for each statewide officer and ballot proposition:

52 (A) the name of the statewide office or ballot proposition that appeared on the ballot;

53 (B) the candidates for each statewide office whose names appeared on the ballot, plus
54 any recorded write-in candidates;

55 (C) the number of votes from each county cast for each candidate and for and against
56 each ballot proposition;

57 (D) the total number of votes cast statewide for each candidate and for and against each
58 ballot proposition; and

- 59 (E) the total number of votes cast statewide; and
- 60 (ii) for each officer or ballot proposition voted on in two or more counties:
- 61 (A) the name of each of those offices and ballot propositions that appeared on the
- 62 ballot;
- 63 (B) the candidates for those offices, plus any recorded write-in candidates;
- 64 (C) the number of votes from each county cast for each candidate and for and against
- 65 each ballot proposition; and
- 66 (D) the total number of votes cast for each candidate and for and against each ballot
- 67 proposition.
- 68 (c) The lieutenant governor shall:
- 69 (i) prepare certificates of election for:
- 70 (A) each successful candidate; and
- 71 (B) each of the presidential electors of the candidate for president [~~who received a~~
- 72 ~~majority of the votes~~] in accordance with Section 20A-13-301;
- 73 (ii) authenticate each certificate with his seal; and
- 74 (iii) deliver a certificate of election to:
- 75 (A) each candidate who had the highest number of votes for each office; and
- 76 (B) each of the presidential electors of the candidate for president [~~who received a~~
- 77 ~~majority of the votes~~] in accordance with Section 20A-13-302.
- 78 (3) If the lieutenant governor has not received election returns from all counties on the
- 79 fifth day before the day designated for the meeting of the state board of canvassers, the
- 80 lieutenant governor shall:
- 81 (a) send a messenger to the clerk of the board of county canvassers of the delinquent
- 82 county;
- 83 (b) instruct the messenger to demand a certified copy of the board of canvasser's report
- 84 required by Section 20A-4-304 from the clerk; and
- 85 (c) pay the messenger the per diem provided by law as compensation.
- 86 (4) The state board of canvassers may not withhold the declaration of the result or any
- 87 certificate of election because of any defect or informality in the returns of any election if the
- 88 board can determine from the returns, with reasonable certainty, what office is intended and
- 89 who is elected to it.

90 (5) (a) At noon on the fourth Monday after the regular primary election, the lieutenant
91 governor shall:

92 (i) canvass the returns for all multicounty candidates required to file with the office of
93 the lieutenant governor; and

94 (ii) publish and file the results of the canvass in the lieutenant governor's office.

95 (b) Not later than the August 1 after the primary election, the lieutenant governor shall
96 certify the results of:

97 (i) the primary canvass, except for the office of President of the United States, to the
98 county clerks; and

99 (ii) the primary canvass for the office of President of the United States to each
100 registered political party that participated in the primary.

101 (6) (a) At noon on the day that falls seven days after the last day on which a county
102 canvass may occur under Section 20A-4-301 for the Western States Presidential Primary
103 election, the lieutenant governor shall:

104 (i) canvass the returns; and

105 (ii) publish and file the results of the canvass in the lieutenant governor's office.

106 (b) The lieutenant governor shall certify the results of the Western States Presidential
107 Primary canvass to each registered political party that participated in the primary not later than
108 the April 15 after the primary election.

109 Section 2. Section **20A-13-301** is amended to read:

110 **20A-13-301. Presidential elections -- Effect of vote.**

111 (1) (a) Each registered political party shall choose persons to act as presidential electors
112 and to fill vacancies in the office of presidential electors for their party's candidates for
113 President and Vice President according to the procedures established in their bylaws.

114 (b) Each registered political party shall certify to the lieutenant governor the names and
115 addresses of the persons selected by the political party as the party's presidential electors by
116 August 31.

117 (2) ~~[The]~~ Except as provided by Subsection (3), the highest number of votes cast for a
118 political party's president and vice president candidates elects the presidential electors selected
119 by that political party.

120 (3) The Agreement Among the States to Elect the President by National Popular Vote

121 governs the appointment of presidential electors if the agreement is in effect as provided by
122 Section 20A-13-401.

123 Section 3. Section **20A-13-302** is amended to read:

124 **20A-13-302. Certificate of election.**

125 (1) The lieutenant governor shall transmit certificates of election to each of the electors
126 selected ~~[by the political party whose candidates for president and vice president received the~~
127 ~~highest number of votes in Utah]~~ in accordance with Section 20A-13-301.

128 (2) Presidential electors may not receive compensation for their services.

129 Section 4. Section **20A-13-401** is enacted to read:

130 **Part 4. Agreement Among the States to Elect the President by National Popular Vote**
131 **20A-13-401. Agreement among the states to elect the president by national**
132 **popular vote.**

133 Pursuant to the terms and conditions of this part, the state seeks to join with other states
134 and enact the Agreement Among the States to Elect the President by National Popular Vote in
135 the form substantially as follows:

136 (1) Article I. Membership - Any state of the United States and the District of
137 Columbia may become a member of this agreement by enacting this agreement.

138 (2) Article II. Right of the People in Member States to Vote for President and Vice
139 President - Each member state shall conduct a statewide popular election for president and vice
140 president of the United States.

141 (3) Article III. Manner of Appointing Presidential Electors in Member States:

142 (a) Prior to the time set by law for the meeting and voting by the presidential electors,
143 the chief election official of each member state shall determine the number of votes for each
144 presidential slate in each state of the United States and in the District of Columbia in which
145 votes have been cast in a statewide popular election and shall add such votes together to
146 produce a "national popular vote total" for each presidential slate.

147 (b) The chief election official of each member state shall designate the presidential
148 slate with the largest national popular vote total as the "national popular vote winner."

149 (c) The presidential elector certifying official of each member state shall certify the
150 appointment in that official's own state of the elector slate nominated in that state in association
151 with the national popular vote winner.

152 (d) At least six days before the day fixed by law for the meeting and voting by the
153 presidential electors, each member state shall make a final determination of the number of
154 popular votes cast in the state for each presidential slate and shall communicate an official
155 statement of such determination within 24 hours to the chief election official of each other
156 member state.

157 (e) The chief election official of each member state shall treat as conclusive an official
158 statement containing the number of popular votes in a state for each presidential slate made by
159 the day established by federal law for making a state's final determination conclusive as to the
160 counting of electoral votes by Congress.

161 (f) In event of a tie for the national popular vote winner, the presidential elector
162 certifying official of each member state shall certify the appointment of the elector slate
163 nominated in association with the presidential slate receiving the largest number of popular
164 votes within that official's own state.

165 (g) If, for any reason, the number of presidential electors nominated in a member state
166 in association with the national popular vote winner is less than or greater than that state's
167 number of electoral votes, the presidential candidate on the presidential slate that has been
168 designated as the national popular vote winner shall have the power to nominate the
169 presidential electors for that state and that state's presidential elector certifying official shall
170 certify the appointment of such nominees.

171 (h) The chief election official of each member state shall immediately release to the
172 public all vote counts or statements of votes as they are determined or obtained.

173 (i) This article shall govern the appointment of presidential electors in each member
174 state in any year in which this agreement is, on July 20, in effect in states cumulatively
175 possessing a majority of the electoral votes.

176 (4) Article IV. Other Provisions:

177 (a) This agreement shall take effect when states cumulatively possessing a majority of
178 the electoral votes have enacted this agreement in substantially the same form and the
179 enactments by such states have taken effect in each state.

180 (b) Any member state may withdraw from this agreement, except that a withdrawal
181 occurring six months or less before the end of a president's term shall not become effective
182 until a president or vice president shall have been qualified to serve the next term.

183 (c) The chief executive of each member state shall promptly notify the chief executive
184 of all other states of when this agreement has been enacted and has taken effect in that official's
185 state, when the state has withdrawn from this agreement, and when this agreement takes effect
186 generally.

187 (d) This agreement shall terminate if the electoral college is abolished.

188 (e) If any provision of this agreement is held invalid, the remaining provisions shall not
189 be affected.

190 (5) Article V. Definitions - For purposes of this agreement:

191 (a) "Chief election official" shall mean the state official or body that is authorized to
192 certify the total number of popular votes for each presidential slate.

193 (b) "Chief executive" shall mean the governor of a state of the United States or the
194 mayor of the District of Columbia.

195 (c) "Elector slate" shall mean a slate of candidates who have been nominated in a state
196 for the position of presidential elector in association with a presidential slate.

197 (d) "Presidential elector" shall mean an elector for president and vice president of the
198 United States.

199 (e) "Presidential elector certifying official" shall mean the state official or body that is
200 authorized to certify the appointment of the state's presidential electors.

201 (f) "Presidential slate" shall mean a slate of two persons, the first of whom has been
202 nominated as a candidate for president of the United States and the second of whom has been
203 nominated as a candidate for vice president of the United States, or any legal successors to such
204 persons, regardless of whether both names appear on the ballot presented to the voter in a
205 particular state.

206 (g) "State" shall mean a state of the United States and the District of Columbia.

207 (h) "Statewide popular election" shall mean a general election in which votes are cast
208 for presidential slates by individual voters and counted on a statewide basis.

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Office of Legislative Research and General Counsel