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K. WilliamsDELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 22

AN ACT TO AMEND TITLE 15 OF THE DELAWARE CODE RELATING THE AGREEMENT AMONG THE STATES TO
ELECT THE PRESIDENT BY NATIONAL POPULAR VOTE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 43A. The Agreement Among the States to Elect the President by National Popular Vote; Effect.

Subchapter I. The Agreement Among the States to Elect the President by National Popular Vote.

§ 4300A. Adoption of the Agreement Among The States To Elect The President By National Popular Vote.

This State hereby enters into the Agreement Among The States To Elect The President By National Popular Vote
 (“agreement”) with all other jurisdictions legally joining the agreement in form substantially as set forth in this chapter.

§ 4301A. Article I; Membership.

Any state of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.

§ 4302A. Article II; Right of the people in member states to vote for President and Vice President.

Each member state shall conduct a statewide popular election for President and Vice President of the United States.

§ 4303A. Article III; Manner of appointing presidential electors in member states.

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

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

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

(d) At least 6 days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within 24 hours to the chief election official of each other member state.

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

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

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

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

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

§ 4304A. Article IV; Other provisions.

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

(b) Any member state may withdraw from this agreement, except that a withdrawal occurring 6 months or less before the end of a President's term shall not become effective until a President or Vice President shall have been qualified to serve the next term.

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

(d) This agreement terminates if the electoral college is abolished.

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

§ 4305A. Article V; Definitions.

For purposes of this agreement:

(1) "Chief executive" shall mean the Governor of a state of the United States or the Mayor of the District of Columbia.

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

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

(4) "Presidential elector" shall mean an elector for President and Vice President of the United States.

(5) “Presidential elector certifying official” shall mean the state official or body that is authorized to certify the appointment of the state’s presidential electors.

(6) “Presidential slate” shall mean a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state.

(7) “State” shall mean a state of the United States and the District of Columbia.

(8) “Statewide popular election” shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

Subchapter II. Effect of the Agreement Among the States to Elect the President by National Popular Vote.

§ 4306A. Effect; State Election Commissioner duties.

(a) The State Election Commissioner shall provide written notice to the Registrar of Regulations that is published in the Register of Regulations when Subchapter I of this chapter, the Agreement Among The States To Elect The President by National Popular Vote, governs a presidential election.

(b) If, after providing notice under subsection (a) of this section, Subchapter I of this chapter, the Agreement Among The States To Elect The President by National Popular Vote, no longer governs a presidential election, the State Election Commissioner shall provide written notice to the Registrar of Regulations that is published in the Register of Regulations stating that Subchapter I of this chapter, the Agreement Among The States To Elect The President by National Popular Vote, no longer governs a presidential election.

(c) Notwithstanding subsections (a) and (b) of this section, on or before August 1 of a year in which there is a presidential election, the State Election Commissioner shall provide written notice to the Registrar of Regulations that is published in the Register of Regulations that states whether or not Subchapter I of this chapter, the Agreement Among The States To Elect The President by National Popular Vote, governs the presidential election.

Section 2. Amend § 4303, Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4303. Meeting and voting of electors.

(a) The electors chosen or appointed in this State for the election of a President and ~~Vice-President~~ Vice President of the United States shall meet and give their votes at Dover on the day determined by Congress for that purpose.

(b) In all cases, the electors chosen or appointed in this State for the election of a President and ~~Vice-President~~ Vice President of the United States under this chapter shall be required to cast their individual votes ~~in accordance with the plurality vote of the voters in this State.~~ for the presidential and vice presidential nominees, or their legal successors, of the political party that nominated the elector.

Section 3. Amend § 5711 of Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5711. Electors for President and ~~Vice-President~~, Vice President; announcements and certifications of election.

The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for electors of President and ~~Vice-President~~ Vice President of the United States, shall without delay examine the certificates and ascertain the electors chosen, and make known the same by proclamation, and cause notice of the elector's election to be transmitted to

each elector. The Governor shall also cause 3 lists of the names of the electors, duly made and certified, to be delivered to the electors, according to the Act of Congress in that behalf on or before the day appointed for their meeting.

Section 4. Amend § 5711 of Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 5711. Electors for President and ~~Vice-President~~; Vice President; announcements and certifications of election.

~~The Governor, after receiving the certificates under the seal of the Superior Court, of the results of the election in each county for electors of President and Vice President of the United States, shall without delay examine the certificates and ascertain the electors chosen, and make known the same by proclamation, and cause notice of the elector's election to be transmitted to each elector. The Governor shall also cause 3 lists of the names of the electors, duly made and certified, to be delivered to the electors, according to the Act of Congress in that behalf on or before the day appointed for their meeting.~~

The Governor is the chief election official under § 4305A(3) of this title and shall, without delay, do all of the following to appoint the electors of President and Vice President of the United States:

(1) Examine the certificates under the seal of the Superior Court.

(2) Appoint electors under Subchapter I of Chapter 43A of this title.

(3) Make known the appointment of electors by proclamation.

(4) Transmit notice of the elector's election to each elector.

(5) Deliver 3 lists of the names of the electors, duly made and certified, to the electors, according to the Act of Congress in that behalf on or before the day appointed for their meeting.

Section 5. Amend § 7704, Title 15 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 7704. Election, how conducted; results, how ascertained.

~~(a) Except as in this chapter otherwise provided, the~~ otherwise provided in this chapter, the election of delegates ~~shall~~ must be conducted and the results thereof ascertained and certified in the same manner as in the case of the election of electors of President and ~~Vice-President~~ Vice President in this State ~~and the~~ during elections in which Subchapter I of Chapter 43A of this title does not govern.

~~(b) The~~ The Governor shall, without delay, examine the certificates and ascertain the delegates to such convention chosen and make known the same by proclamation and cause notice to be given to each delegate so elected of the delegate's election as a delegate. All provisions of the laws of this State relative to elections, except as far as inconsistent with this chapter, shall be applicable to such election.

Section 6. Sections 1, 2, 3, and 5 of this Act take effect upon their enactment into law. Section 1 of this Act applies to a presidential election whenever the State Election Commissioner provides notice under § 4306A of Section 1 of this Act that the Agreement Among The States To Elect The President By National Popular Vote in Section 1 of this Act governs a presidential election. Section 4 of this Act takes effect whenever the State Election Commissioner provides notice under § 4306A of Section 1 of this Act that the Agreement Among The States To Elect The President By National Popular Vote in Section 1 of this Act governs a presidential election.

SYNOPSIS

Act enacts the National Popular Vote compact, which changes the Electoral College from an institution that reflects the voters' state-by-state choices into a body that reflects the voters' nationwide choice. Currently, state statutes require that electoral votes are controlled by the plurality of the voters in the state but this system is not required by the U.S. Constitution or federal law. The National Popular Vote compact requires that each member state award its electoral votes to the presidential candidate who received the largest number of popular votes in all 50 states and the District of Columbia. The National Popular Vote compact becomes effective when it is enacted by states collectively possessing a majority of the electoral votes. When the National Popular Vote compact takes effect, the presidential candidate receiving the most popular votes in all 50 states and the District of Columbia would be guaranteed enough electoral votes in the Electoral College to be elected to the Presidency.

Specifically, this Act does the following:

Section 1. Adopts The Agreement Among the States to Elect the President by National Popular Vote ("National Popular Vote compact") and provides for notice regarding when the National Popular Vote compact is in effect and governs a presidential election.

Section 2. Revises the wording of § 4303(b) so that it correctly addresses how electors must vote in any presidential election. This is not a substantive change to current law, which governs when the National Popular Vote compact is not applicable to an election, because the electors nominated by the political party that received the plurality of vote of the voters of this State are the electors who are appointed.

Section 3. Corrects a typographical error in § 5711.

Section 4. Revises § 5711 to govern when the National Popular Vote compact governs a presidential election. Both versions of § 5711 will appear in the Delaware Code with a note at the top of each version stating if that version governs the next presidential election.

Section 5. Revises § 7704 of Title 15 regarding the election of delegates to a state constitutional convention to ratify proposed amendments to the U.S. Constitution so that it remains unchanged by the National Popular Vote compact. The statute currently provides that delegates are elected "in the same manner as in the case of the election for electors for President and Vice President." Because the National Popular Vote compact changes how electors are selected, § 7704 is revised so that delegates to a national constitutional convention are nominated and elected in the current manner, regardless of whether the National Popular Vote compact governs the next presidential election.

Section 6. Clarifies the effective date of this Act and when Section 1 of this Act governs a presidential election.

Author: Senator Townsend