

2007 DRAFTING REQUEST

Bill

Received: 10/23/2006

Received By: **jkuesel**

Wanted: **As time permits**

Identical to LRB:

For: **Terese Berceau (608) 266-3784**

By/Representing: **Tom Powell**

This file may be shown to any legislator: **NO**

Drafter: **jkuesel**

May Contact:

Addl. Drafters:

Subject: **Elections - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Berceau@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Election of president by popular vote

Instructions:

Per attached E mail, 10/23/06.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkuesel 11/29/2006	wjackson 12/28/2006		_____			
/1			nmatzke 12/28/2006	_____	cduerst 12/28/2006		
/2	jkuesel 02/04/2007	wjackson 02/06/2007	pgreensl 02/06/2007	_____	mbarman 02/06/2007	cduerst 02/07/2007	

FE Sent For: *none*

<END>

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/1			nmatzke 12/28/2006	_____	cduerst 12/28/2006		
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FE Sent For:

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/?	jkuesel 11/29/2006	wjackson 12/28/2006					
/1	jkuesel 2/4/07	1/2 WJ 2/5	nmatzke 12/28/2006		cdurst 12/28/2006		

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1? / 1	jkuesel 11/29/06	1 WLJ 12/27	nwn 12/28	nwn/cd 12/28			

FE Sent For:

<END>

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.

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."

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.

At least six 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.

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.

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.

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. 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.

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.

(4) Article IV—Other Provisions. 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.

Any member state may withdraw from this agreement, except that a withdrawal occurring six 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.

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.

This agreement shall terminate if the electoral college is abolished.

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

(5) Article V—Definitions. For purposes of this agreement,

“chief executive” shall mean the Governor of a State of the United States or the Mayor of the District of Columbia.

“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.

“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.

“presidential elector” shall mean an elector for President and Vice President of the United States.

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

“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.

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

“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.

Kuesel, Jeffery

From: Powell, Thomas
Sent: Monday, October 23, 2006 2:38 PM
To: Kuesel, Jeffery
Subject: Berceau bill request

Attachments: Wisconsin-TATTS-2006-8-8-NOTED.doc



Wisconsin-TATTS-2
006-8-8-NOTED...

Jeffrey,
Here is the language

Thanks very much,
Tom Powell

Date (time) needed

DNOTE

12/17

LRB - 0568 / 1

JTK: WLj

BILL

Today if possible.

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] **to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .** of the

statutes; **relating to:** entering into an agreement among the States to elect the president of the United States by means of a national popular vote

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

- For the main heading, execute: **create → anal: → title: → head**
- For the subheading, execute: **create → anal: → title: → sub**
- For the sub-subheading, execute: **create → anal: → title: → sub-sub**

For the analysis text, in the component bar:

- For the text paragraph, execute: **create → anal: → text**

Attached.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0568/1ins2
JTK.....

Lps: Please
check spacing.

Currently, the names of the presidential electors do not appear on the ballot in this state. Instead, the names of the candidates for president and vice president appear on the ballot and each vote cast for one of the tickets is a vote for the presidential electors whose names are filed by their political party or, in the case of independent candidates, whose names are filed with the nomination papers of the candidates. After the winners of the presidential election in this state are determined, the presidential electors whose names have been filed convene and cast their ballots for the candidates of the party who filed their names, or in the case of independent candidates, for the candidates who filed their names.

This bill ratifies an agreement between the states which provides that this state will certify as the winning slate of presidential electors the electors of the party, or in the case of independent candidates, the electors of the candidates who win the national popular vote for president and vice president. Under the agreement, the executive director of the elections board must certify to the other states the winners of the presidential and vice presidential vote in this state and must accept the determinations of the chief election officials of the other states in calculating the numbers of votes cast for the presidential and vice presidential candidates in their states.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0568/lins
JTK.....

LPS: Please
check spacing.

SECTION 1. 5.10 of the statutes is amended to read:

5.10 Presidential electors. Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector's vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for ~~them through their pledged~~ the presidential electors who represent the candidates.

History: 1973 c. 334 s. 2; Stats. 1973 s. 5.10; 1977 c. 26; 1979 c. 89, 311.

SECTION 2. 5.11 of the statutes is created to read:

5.11 Interstate compact on election of president and vice president.

SECTION 3. 5.12 of the statutes is created to read:

5.12 Governor to notify revisor when agreement takes effect. Whenever the governor notifies the chief executives of the other states that the agreement ratified under s. 5.11 is in effect in this state, the governor shall concurrently notify the revisor of statutes ~~to the same effect.~~ *that the agreement is in*

SECTION 4. 7.70 (5) (b) of the statutes is amended to read:

7.70 (5) (b) For presidential electors, the elections board shall prepare a certificate showing the determination of the results of the canvass and the names of the persons elected who are certified as winners in accordance with s. 5.11, and the governor shall sign, affix the great seal of the state and transmit the certificate by registered mail to the U.S. administrator of general services. The governor shall also prepare 6 duplicate originals of such certificate and deliver them to one of the

presidential electors on or before the first Monday after the 2nd Wednesday in December.

History: 1971 c. 304 s. 29 (2); 1973 c. 334 ss. 15, 57; 1975 c. 93, 199; 1977 c. 107, 187, 427, 449; 1979 c. 221, 260, 328; 1983 a. 484; 1985 a. 89, 304; 1987 a. 391; 1989 a. 31, 192; 1995 a. 16 s. 2; 1997 a. 27; 1999 a. 150 s. 672; 1999 a. 182; 2005 a. 451.

SECTION 5. 7.75 (2) of the statutes is amended to read:

7.75 (2) The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them under s. 8.18, the candidates whose names appeared on the nomination papers filed under s. 8.20, or the candidate or candidates who filed their names under s. 8.185 (2), except that at least one of the persons for whom the electors vote may not be an inhabitant of this state. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting who are certified as winners under s. 5.11.

History: 1979 c. 246

SECTION 6. Effective date. This act takes effect on the day after publication, except as follows:

- (1) The treatment of sections 5.10, 7.70 (5) (b), and 7.75 (2) of the statutes takes effect upon notification by the governor to the revisor of statutes that the agreement ratified by this state under section 5.11 of the statutes, as created by this act, is in effect in this state.

(END)

W.S.A.: 1

2006 ASSEMBLY BILL _____

_____, 2006 - Introduced by _____ Referred to Committee on _____.

AN ACT to create _____ of the statutes; relating to: entering into the agreement among the states to elect the president by national popular vote

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. _____ of the statutes is created to read:

No B

~~Agreement among the states to elect the president by national popular vote.~~

ALL CAPS

IMPORTANT NOTE: An interstate compact is a contract. Therefore, each state wishing to participate in the compact must enact the same 888 words of this contractual agreement. A detailed explanation of this legislation appears in chapter 6 of the book *Every Vote Equal: A State-Based Plan For Electing The President By National Popular Vote* (available to read or download for free at www.every-vote-equal.com). Additional information (or copies of the book) may be obtained from National Popular Vote at www.NationalPopularVote.com or toll-free at 866-766-9900.

(1) ~~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.

(2) ~~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.

(3) ~~Article III - Manner of Appointing Presidential Electors in Member States~~ 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 in the District of

ALL CAPS

DWS A:2

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.

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."

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.

At least ~~six~~⁵ 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.

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.

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.

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. 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.

Jur SA : 3

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.

(CS) Art 4
(4) ~~Article IV - Other Provisions~~] 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.

Any member state may withdraw from this agreement, except that a withdrawal occurring ⁶ ~~six~~ 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.

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.

This agreement shall terminate if the electoral college is abolished.

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

(CS) Art 5
(5) ~~Article V - Definitions~~] For purposes of this agreement

(a) "chief executive" shall mean the ~~Governor~~ of a ~~State~~ of the United States or the Mayor of the District of Columbia.

(b) "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.

(c) "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.

(d) "presidential elector" shall mean an elector for ~~President~~ and ~~Vice President~~ of the United States.

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

(f) "presidential slate" shall mean a slate of ² ~~two~~ persons, the first of whom has been nominated as a candidate for ~~President~~ of the United States and the ^{2nd} ~~second~~ of whom

ANS A:4

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.

(X) state shall mean a ~~State~~ of the United States and the District of Columbia.

(X) 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.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0568/1dn
JTK.../.....

Wlj

LPS: please
check
spacing.

No B

SP = fifth
elector

Representative Berceau:

1. Although I have not changed the wording of the proposed compact because I recognize that in order for it to be effective, all participating states must agree to the same wording, I would note that ~~that~~ in article III, the ~~5th~~ paragraph is difficult to follow. It appears to want to say that in making our determination of the national popular vote total, we must use the determinations of other states regarding the numbers of votes cast in those states as of the federal reporting deadline. However, the syntax is awkward and I'm not sure how this is going to be interpreted.

2. Also, if we must wait until the federal reporting deadline to make our determination, it will be difficult to have our presidential electors vote before that day. Currently, federal law requires ~~them~~ to meet on the first Monday after the 2nd Wednesday in December [3 USC 7], but the deadline for receipt of their ballots appears to be the 4th Wednesday in December [3 USC 12].

3. In addition, it is possible that it will not be clear who has won the presidential vote in every state by the 4th Wednesday in December. In a close election, it's possible that the results could still be in litigation on that date.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

and
SD 7075 (1/15/20)

and
state

the

the electors

SP

SP

2005 – 2006 LEGISLATURE

2006 ASSEMBLY BILL _____

_____, 2006 – Introduced by _____. Referred to Committee on _____.

AN ACT to create _____ of the statutes; relating to: entering into the agreement among the states to elect the president by national popular vote

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. _____ of the statutes is created to read:

_____ Agreement among the states to elect the president by national popular vote.

IMPORTANT NOTE: An interstate compact is a contract. Therefore, each state wishing to participate in the compact must enact the same 888 words of this contractual agreement. A detailed explanation of this legislation appears in chapter 6 of the book *Every Vote Equal: A State-Based Plan For Electing The President By National Popular Vote* (available to read or download for free at www.every-vote-equal.com). Additional information (or copies of the book) may be obtained from National Popular Vote at www.NationalPopularVote.com or toll-free at 866-766-9900.

(1) 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.

(2) 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.

(3) Article III—Manner of Appointing Presidential Electors in Member States. 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 in the District of

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0568/1dn
JTK:wlj:nwn

December 28, 2006

Representative Berceau:

1. Although I have not changed the wording of the proposed compact because I recognize that in order for it to be effective, all participating states must agree to the same wording, I note that in article III the fifth paragraph is difficult to follow. It appears to want to say that in making our determination of the national popular vote total, we must use the determinations of the other states regarding the numbers of votes cast in those states as of the federal reporting deadline. However, the syntax is awkward, and I'm not sure how this will be interpreted.
2. Also, if we must wait until the federal reporting deadline to make our determination, it will be difficult to have our presidential electors vote before that day. Currently, federal and state law require the electors to meet on the first Monday after the second Wednesday in December [3 USC 7 and s. 7.75 (1), stats.], but the deadline for receipt of their ballots appears to be the fourth Wednesday in December [3 USC 12].
3. In addition, it is possible that it will not be clear who has won the presidential vote in every state by the fourth Wednesday in December. In a close election, it's possible that the results could still be in litigation on that date.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

From: Powell, Thomas
Sent: Thursday, January 04, 2007 3:31 PM
To: Kuesel, Jeffery
Subject: LRB 0568/1

Jeffrey,

Thank you very much for drafting the interstate compact for the national presidential election for us (LRB-0568/1).

It looks good. I sent a copy of it and your drafter's notes along to Dr. John Koza (who is one of the national organizers for the initiative).

He had a suggestion for one very small change. I will forward his two e-mails to you for clarification. He also commented upon the questions you raised in your drafter's notes.

I give him permission to contact you directly to guide any changes to the bill. I believe he will try to contact you tomorrow (Friday).

Tom Powell
Research Assistant for Rep. Terese Berceau

Kuesel, Jeffery

From: Powell, Thomas
Sent: Thursday, January 04, 2007 3:32 PM
To: Kuesel, Jeffery
Subject: FW: National Popular Vote in Wisconsin / One change needed in draft bill

Attachments: EVE-CH-6-Ed1-Pr4.pdf



EVE-CH-6-Ed1-Pr4.
pdf (108 KB)

-----Original Message-----

From: John Koza [mailto:john@johnkoza.com]
Sent: Thursday, January 04, 2007 12:19 PM
To: Powell, Thomas
Cc: fadem; pearson
Subject: National Popular Vote in Wisconsin / One change needed in draft bill

TO: Thomas Powell

This is in response to your e-mail to Vermont State Representative Chris Pearson requesting that we respond to you concerning the December 28, 2006 draft of the National Popular Vote bill in Wisconsin. Rep. Pearson has asked me to respond because his legislature is now in session. By way of introduction, I am originator of the proposed "Agreement among the states to elect the president by national popular vote" and Barry Fadem (receiving a copy of this e-mail) is President of National Popular Vote.

We very much appreciate your efforts and the support and interest of Representative Berceau on this bill. Thank you for showing us the draft bill (07-05681.pdf).

The 888 words of the compact that would be added to section 5.11 of the Wisconsin statutes are satisfactory (the differences being only punctuation, capitalization, and deletion of the word "and" associated with the change in punctuation).

Before proceeding, let me emphasize that there is no need to make the changes in 5.10, 7.70(5)(b) and 7.75(2) at this time because it is settled law that the terms of an interstate compact take precedence over any state law. The provisions of an interstate compact are like self-executing provisions of the state constitution in that they automatically take precedence over any contrary statutory language.

If, however, you desire to make the changes in 5.10, 7.70(5)(b) and 7.75(2) at this time, the trigger contained in section 6 is not exactly right. It is not enough to refer to the compact being "in effect" because the compact makes a necessary and important distinction between when the compact goes "into effect" generally (1st clause of Article IV) and whether a particular presidential election is "governed" by the compact (1st clause of Article IV). Our book describes the numerous reasons for this distinction. Two of the (albeit unlikely) situations where this distinction would matter would be if the compacting states fell below a majority of electoral votes due to a census reapportionment or due to withdrawal by one or more member states. Thus, there is a possibility that the compact could be "in effect" in general, but that it might not actually "govern" a particular presidential election. I am attaching, for your convenience, chapter 6 of our book which explains this point in additional detail. We'll be happy to send you a copy of our book if you don't have it. The book is readable on-line at www.every-vote-equal.com.

Therefore, the trigger contained in section 6 should be keyed to BOTH the 9th clause of Article III of the compact and the 1st clause of Article IV of the compact. I would suggest that part (1) of section 6 of the bill be changed to something like:

"The treatment of sections 5.10, 7.70 (5) (b), and 7.75 (2) of the statutes applies when the interstate compact contained in 5.11 of the statutes becomes effective as provided in Article IV of that compact and when that compact governs the appointment of presidential electors for a presidential election as provided in Article III of that compact."

I will respond to the thoughtful questions raised in the letter from Jeffrey Kuesel (07-05681dn.pdf) in another e-mail (momentarily).

Dr. John R. Koza
PO Box K
Los Altos, CA 94023 USA
Phone: 650-941-0336
Fax: 650-941-9430
E-Mail: john@johnkoza.com
URL: www.genetic-programming.com
URL: www.NationalPopularVote.com

To: Thomas Powell, Research Assistant for Rep. Terese Berceau Office of Representative Terese Berceau Wisconsin House of Representatives Washington Street - P.O. Box 8952 State Capitol Madison, WI 53708-8952 Capitol Phone: 608-266-3784
Email: Thomas.Powell@legis.wisconsin.gov

> From: "Powell, Thomas" <Thomas.Powell@legis.wisconsin.gov>
> Date: January 2, 2007 11:12:18 AM EST (CA)
> To: <cp@biglocomotive.net>
> Subject: Wisconsin National Popular Vote compact
>
> <<07-05681.pdf>> <<07-05681dn.pdf>>
>
> Attached is a copy of the Wisconsin draft of the interstate compact
> for the election of a president by national popular vote.
>
> Please look it over, and inform me of any problems and the need for
> any changes.
>
> I also included the drafting attorney's notes, which may be of
> interest.
>
> Thanks,
> Tom Powell
> Research Assistant for Rep. Terese Berceau
>

Kuesel, Jeffery

From: Powell, Thomas
Sent: Thursday, January 04, 2007 3:32 PM
To: Kuesel, Jeffery
Subject: FW: National Popular Vote bill in Wisconsin / Response to 3 issues raised in letter from Jeffrey Kuesel

Attachments: EVE-CH-6-Ed1-Pr4.pdf



EVE-CH-6-Ed1-Pr4.
pdf (108 KB)

-----Original Message-----

From: John Koza [mailto:john@johnkoza.com]
Sent: Thursday, January 04, 2007 12:19 PM
To: Powell, Thomas
Cc: fadem; pearson
Subject: National Popular Vote bill in Wisconsin / Response to 3 issues raised in letter from Jeffrey Kuesel

TO: Thomas Powell

We very much appreciate your efforts and the support and interest of Representative Berceau for the National Popular Vote bill in Wisconsin.

This is in response to the 3 thoughtful issues raised in the December 28, 2006, letter from Jeffrey Kuesel (07-05681dn.pdf) to Rep. Berceau. Please feel free to send this response to Jeffrey Kuesel and let him know that we are available to discuss these questions, or any others, at his convenience.

Concerning the first issue, Jeffrey Kuesel is correct in saying that the 5th clause of Article III of our compact is "difficult" to read. This wording was consciously chosen to closely parallel the wording of existing federal law (title 3, chapter 1, section 5). We choose to follow the federal wording in order to make it clear that we were saying exactly the same thing, namely that the secretaries of state in the compacting states are obligated to honor all other state's election returns in the very same manner as Congress is obligated to do honor the state returns. In other words, we were retaining, and building on, the current state-based system. This federal statutory language came about as a result of the disputed 1876 Tilden-Hayes election when Congress was placed in the position of having to judge election returns from several disputed states. When the joint session of Congress counts the electoral votes on January 6th as provided in title 3, chapter 1, section 15 of the United States Code, each state's own "final determination" of its vote is considered "conclusive" as to the counting of electoral votes by Congress if it was finalized by the date established in the "safe harbor" provision of federal law (title 3, chapter 1, section 5).

The fifth clause of article III of the compact makes each state's final determination of its popular vote similarly "conclusive" when the chief election official of each compacting state adds up the national popular vote under the terms of the compact. The "safe harbor" provision of federal law (section 5 of title 3, chapter 1 of the United States Code) provides:

"If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the

ascertainment of the electors appointed by such State is concerned."

I am attaching, for your convenience, chapter 6 of our book which explains this point. We'll be happy to send you a copy of our book if you don't have it. The book is readable on-line at www.every-vote-equal.com.

This leads to the second and third issues in the letter. The federally established "safe harbor" date for the 2004 presidential election was Monday December 6, 2004. The designated day for the meeting of the Electoral College in 2004 was Monday, December 13. These are the two critical dates in the process. The Constitution requires the electors to meet on the same day throughout the United States (which, by statute, was December 13 in 2004).

That is, there is no possibility of a prolongation of the presidential election beyond December 13 under any scenario. The fourth clause of article III of the compact mandates each member state to comply with the "safe harbor" deadline. As a practical matter, this clause in the compact is merely a backstop because the vast majority of states already have specific state statutory deadlines for certifying the results of presidential elections, and these existing statutory deadlines come earlier than the federal "safe harbor" date (see appendix T of our book). In any event, the fourth clause of article III of the compact and the existing state statutory deadlines are themselves backstops because the U.S. Supreme Court in *Bush v.*

Gore effectively treated the "safe harbor" date as a deadline for a state's "final determination" of its presidential election results. Moreover, even though the Supreme Court has, in effect, said that all controversies must be settled by the "safe harbor" date, our compact gives the compacting states 6 additional days of time. The first clause of article III says,

"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 in the District of Columbia . . . and shall add such votes together to produce a "national popular vote total" for each presidential slate."

If you would like to discuss this matter, please contact us.

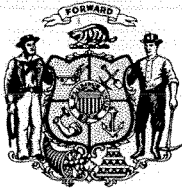
Thank you again for your efforts and support.

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To: Thomas Powell, Research Assistant for Rep. Terese Berceau Office of Representative Terese Berceau Wisconsin House of Representatives Washington Street - P.O. Box 8952 State Capitol Madison, WI 53708-8952 Capitol Phone: 608-266-3784
Email: Thomas.Powell@legis.wisconsin.gov

> From: "Powell, Thomas" <Thomas.Powell@legis.wisconsin.gov>
> Date: January 2, 2007 11:12:18 AM EST (CA)
> To: <cp@biglocomotive.net>
> Subject: Wisconsin National Popular Vote compact
>
> <<07-05681.pdf>> <<07-05681dn.pdf>>
>
> Attached is a copy of the Wisconsin draft of the interstate compact
> for the election of a president by national popular vote.
>
> Please look it over, and inform me of any problems and the need for
> any changes.
>
> I also included the drafting attorney's notes, which may be of
> interest.

>
> Thanks,
> Tom Powell
> Research Assistant for Rep. Terese Berceau
>



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0568/12

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2007 BILL

1 AN ACT ^(regenerate) to amend 5.10, 7.70 (5) (b) and 7.75 (2), and to create 5.11 and 5.12 of
2 the statutes; relating to: entering into an agreement among the states to elect
3 the president of the United States by means of a national popular vote.

Analysis by the Legislative Reference Bureau

Currently, the names of the presidential electors do not appear on the ballot in this state. Instead, the names of the candidates for president and vice president appear on the ballot and each vote cast for one of the tickets is a vote for the presidential electors whose names are filed by their political party or, in the case of independent candidates, whose names are filed with the nomination papers of the candidates. After the winners of the presidential election in this state are determined, the presidential electors whose names have been filed convene and cast their ballots for the candidates of the party who filed their names, or in the case of independent candidates, for the candidates who filed their names.

This bill ratifies an agreement among the states which provides that this state will certify ~~as the winning state of presidential electors~~ the electors of the party, or in the case of independent candidates, the electors of the candidates, who win the national popular vote for president and vice president. Under the agreement, the executive director of the elections board must certify to the other states the winners of the presidential and vice presidential vote in this state and must accept the determinations of the chief election officials of the other states in calculating the

as the winning state of presidential electors in this state

if the agreement governs a particular presidential election

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numbers of votes cast for the presidential and vice presidential candidates in their states.

the agreement governs the election of presidential electors in this state in any year in which the agreement is, on July 20, in effect in states cumulatively possessing a majority of electoral votes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 5.10 of the statutes is amended to read:

Please Fix Comp.

renumbered 5.10(1) and

2 **5.10 Presidential electors.** Although the names of the electors do not appear
3 on the ballot and no reference is made to them, a vote for the president and vice
4 president named on the ballot is a vote for the electors of the candidates for whom
5 an elector's vote is cast. Under chs. 5 to 12, all references to the presidential election,
6 the casting of votes and the canvassing of votes for president, or for president and
7 vice president, mean votes for them through their pledged the presidential electors
8 who represent the candidates.

No B

restored

or if the compact under 5.11 governs the election of presidential electors, the references mean votes for the presidential electors.

9 **SECTION 2.** 5.11 of the statutes is created to read:

10 **5.11 Interstate compact on election of president and vice president.**

11 **AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY**
12 **NATIONAL POPULAR VOTE.**

13 (1) **ARTICLE I—MEMBERSHIP.** Any state of the United States and the District of
14 Columbia may become a member of this agreement by enacting this agreement.

15 (2) **ARTICLE II—RIGHT OF THE PEOPLE IN MEMBER STATES TO VOTE FOR PRESIDENT**
16 **AND VICE PRESIDENT.** Each member state shall conduct a statewide popular election
17 for president and vice president of the United States.

18 (3) **ARTICLE III—MANNER OF APPOINTING PRESIDENTIAL ELECTORS IN MEMBER**
19 **STATES.** Prior to the time set by law for the meeting and voting by the presidential
20 electors, the chief election official of each member state shall determine the number
21 of votes for each presidential slate in each state of the United States and in the

in the Wisconsin Administrative Register

*Section # C/P; 5.10(2)
5.10(2) No later than August 1 of each year in which a president is to be elected, the legal counsel to the board shall determine whether the compact under 5.11 governs the election of presidential electors at that election in this state and shall promptly publish a copy of his or her determination.*

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1 District of Columbia in which votes have been cast in a statewide popular election
2 and shall add such votes together to produce a “national popular vote total” for each
3 presidential slate.

4 The chief election official of each member state shall designate the presidential
5 slate with the largest national popular vote total as the “national popular vote
6 winner.”

7 The presidential elector certifying official of each member state shall certify the
8 appointment in that official’s own state of the elector slate nominated in that state
9 in association with the national popular vote winner.

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

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

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

23 If, for any reason, the number of presidential electors nominated in a member
24 state in association with the national popular vote winner is less than or greater than
25 that state’s number of electoral votes, the presidential candidate on the presidential

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1 slate that has been designated as the national popular vote winner shall have the
2 power to nominate the presidential electors for that state and that state's
3 presidential elector certifying official shall certify the appointment of such nominees.
4 The chief election official of each member state shall immediately release to the
5 public all vote counts or statements of votes as they are determined or obtained.

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

9 (4) ARTICLE IV—OTHER PROVISIONS. This agreement shall take effect when
10 states cumulatively possessing a majority of the electoral votes have enacted this
11 agreement in substantially the same form, and the enactments by such states have
12 taken effect in each state.

13 Any member state may withdraw from this agreement, except that a
14 withdrawal occurring 6 months or less before the end of a president's term shall not
15 become effective until a president or vice president shall have been qualified to serve
16 the next term.

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

21 This agreement shall terminate if the electoral college is abolished.

22 If any provision of this agreement is held invalid, the remaining provisions
23 shall not be affected.

24 (5) ARTICLE V—DEFINITIONS. For purposes of this agreement:

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1 "Chief executive" shall mean the governor of a state of the United States or the
2 mayor of the District of Columbia.

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

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

7 "Presidential elector" shall mean an elector for president and vice president of
8 the United States.

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

11 "Presidential slate" shall mean a slate of 2 persons, the first of whom has been
12 nominated as a candidate for president of the United States and the 2nd of whom has
13 been nominated as a candidate for vice president of the United States, or any legal
14 successors to such persons, regardless of whether both names appear on the ballot
15 presented to the voter in a particular state.

16 "State" shall mean a state of the United States and the District of Columbia.

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

19 **SECTION 3.** 5.12 of the statutes is created to read:

20 **5.12 Governor to notify revisor when agreement ^{is in} takes effect.** Whenever
21 the governor notifies the chief executives of the other states that the agreement
22 ratified under s. 5.11 is in effect in this state, ^{or that this state has withdrawn from the agreement} the governor shall concurrently notify ⁵
23 the revisor of statutes that the agreement is in effect ^{or is no longer in effect}
24 ^{in this state}

SECTION 4. 7.70 (5) (b) of the statutes is amended to read:

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1 7.70 (5) (b) For presidential electors, the elections board shall prepare a
 2 certificate showing the determination of the results of the canvass and the names of
 3 the persons elected ^{as presidential electors; or if the compact under so 5011} who are certified as winners in accordance with s. 5.11, and the ^{governs}
 4 governor shall sign, affix the great seal of the state and transmit the certificate by ^{the} election
 5 registered mail to the U.S. administrator of general services. The governor shall also ^{of}
 6 prepare 6 duplicate originals of such certificate and deliver them to one of the ^{presidential}
 7 presidential electors on or before the first Monday after the 2nd Wednesday in ^{electors,}
 8 December. ^{the} names
^{of}
^{the}
^{persons}

9 SECTION 5. 7.75 (2) of the statutes is amended to read:

10 7.75 (2) ^{↓ except as provided in this subsection, the} The presidential electors, when convened, shall vote by ballot for that
 11 person for president and that person for vice president who are, respectively, the
 12 candidates of the political party which nominated them under s. 8.18, the candidates
 13 whose names appeared on the nomination papers filed under s. 8.20, or the candidate
 14 or candidates who filed their names under s. 8.185 (2), except that at least one of the
 15 persons for whom the electors vote may not be an inhabitant of this state. A
 16 presidential elector is not required to vote for a candidate who is deceased at the time
 17 of the meeting certified as winners under s. 5.11 ^{plain period}

18 SECTION 6. Effective dates. This act takes effect on the day after publication,
 19 except as follows: ^{renumbering and} the amendment of section 5.10 of the statutes ^{and the creation of section 5.10(2) of the statutes}

20 (1) The treatment of sections 5.10, 7.70 (5) (b) and 7.75 (2) of the statutes takes
 21 effect upon notification by the governor to the revisor of statutes that the agreement
 22 ratified by this state under section 5.11 of the statutes, as created by this act, is in
 23 effect in this state.

(END)

^{the presidential electors shall}
^{vote for}
 If the compact under so 5011 governs the election
 of presidential electors, the persons for president
 and vice president who are, respectively,

restoring
stricken text

Duerst, Christina

From: Powell, Thomas
Sent: Wednesday, February 07, 2007 10:48 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-0568/2 Topic: Election of president by popular vote

Please Jacket LRB 07-0568/2 for the ASSEMBLY.