

2009 DRAFTING REQUEST

Bill

Received: 07/16/2009

Received By: jkuesel

Wanted: As time permits

Identical to LRB:

For: Kelda Helen Roys (608) 266-5340

By/Representing: Emily McWilliams

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.Roys@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Election of president by popular vote

Instructions:

Per 07 AB-313.

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 08/03/2009	wjackson 08/12/2009					
/1			rschluet 08/12/2009		sbasford 08/12/2009	cduerst 02/12/2010	

FE Sent For:

<END>

↳ Not Needed

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12/1	jkuesel 8/3/09	11 kjf 8/12		St mel 8/12			

FE Sent For:

<END>

NOTE

From: 07-0568/2

2009
2007-2008 LEGISLATURE

-3136/1
LRB-0568/2

JTK:wlj:pb

Wrote by Wad 8/12

↑
Stays

2007 ASSEMBLY BILL 313

May 8, 2007 - Introduced by Representatives BERCEAU, BLACK, TRAVIS, GRIGSEY, A. WILLIAMS, BOYLE, SINICKI and TOLES, cosponsored by Senator WIRCH. Referred to Committee on Elections and Constitutional Law.

LPS: Please PWF

Regen

- 1 AN ACT ^{Regen} to *renumber and amend* 5.10; to *amend* 7.70 (5) (b) and 7.75 (2); and
- 2 to *create* 5.10 (2), 5.11 and 5.12 of the statutes; **relating to:** entering into an
- 3 agreement among the states to elect the president of the United States by
- 4 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 if the agreement governs a particular presidential election, this state will certify 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 as the winning slate of presidential electors in this state. Under the agreement, the ~~board~~ the ~~board~~ 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

Legal counsel to

government accountability

ASSEMBLY BILL 313

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 renumbered 5.10 (1) and amended to read:

2 5.10 (1) Although the names of the electors do not appear on the ballot and no
3 reference is made to them, a vote for the president and vice president named on the
4 ballot is a vote for the electors of the candidates for whom an elector's vote is cast.
5 Under chs. 5 to 12, all references to the presidential election, the casting of votes and
6 the canvassing of votes for president, or for president and vice president, mean votes
7 for them through their pledged presidential electors, or if the compact under s. 5.11
8 governs the election of presidential electors, the references mean votes for the
9 presidential electors who represent the candidates.

10 **SECTION 2.** 5.10 (2) of the statutes is created to read:

11 5.10 (2) No later than August 1 of each year in which a president is to be elected,
12 the legal counsel to the board shall determine whether the compact under s. 5.11
13 governs the election of presidential electors at that election in this state and shall
14 promptly publish a copy of his or her determination in the Wisconsin administrative
15 register.

16 **SECTION 3.** 5.11 of the statutes is created to read:

17 **5.11 Interstate compact on election of president and vice president.**

18 AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY
19 NATIONAL POPULAR VOTE.

ASSEMBLY BILL 313

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

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

6 **(3)** ARTICLE III—MANNER OF APPOINTING PRESIDENTIAL ELECTORS IN MEMBER
7 STATES. Prior to the time set by law for the meeting and voting by the presidential
8 electors, the chief election official of each member state shall determine the number
9 of votes for each presidential slate in each state of the United States and in the
10 District of Columbia in which votes have been cast in a statewide popular election
11 and shall add such votes together to produce a “national popular vote total” for each
12 presidential slate.

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

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

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

24 The chief election official of each member state shall treat as conclusive an
25 official statement containing the number of popular votes in a state for each

ASSEMBLY BILL 313**SECTION 3**

1 presidential slate made by the day established by federal law for making a state's
2 final determination conclusive as to the counting of electoral votes by Congress.

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

7 If, for any reason, the number of presidential electors nominated in a member
8 state in association with the national popular vote winner is less than or greater than
9 that state's number of electoral votes, the presidential candidate on the presidential
10 slate that has been designated as the national popular vote winner shall have the
11 power to nominate the presidential electors for that state and that state's
12 presidential elector certifying official shall certify the appointment of such nominees.
13 The chief election official of each member state shall immediately release to the
14 public all vote counts or statements of votes as they are determined or obtained.

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

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

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

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

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

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

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

9 “Chief executive” shall mean the governor of a state of the United States or the
10 mayor of the District of Columbia.

11 “Elector slate” shall mean a slate of candidates who have been nominated in a
12 state for the position of presidential elector in association with a presidential slate.

13 “Chief election official” shall mean the state official or body that is authorized
14 to certify the total number of popular votes for each presidential slate.

15 “Presidential elector” shall mean an elector for president and vice president of
16 the United States.

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

19 “Presidential slate” shall mean a slate of 2 persons, the first of whom has been
20 nominated as a candidate for president of the United States and the 2nd of whom has
21 been nominated as a candidate for vice president of the United States, or any legal
22 successors to such persons, regardless of whether both names appear on the ballot
23 presented to the voter in a particular state.

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

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SECTION 3

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

3 SECTION 4. 5.12 of the statutes is created to read:

4 5.12 Governor to notify ^{reference Bureau} ~~refer~~ when agreement is in effect. Whenever
5 the governor notifies the chief executives of the other states that the agreement
6 ratified under s. 5.11 is in effect in this state, or that this state has withdrawn from
7 the agreement, the governor shall concurrently notify the ^{legislative reference Bureau} ~~legislative reference Bureau~~ that the
8 agreement is in effect or is no longer in effect in this state.

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

10 7.70 (5) (b) For presidential electors, the ^{as affected by} ~~elections~~ board shall prepare a
11 certificate showing the determination of the results of the canvass and the names of
12 the persons elected as presidential electors, or if the compact under s. 5.11 governs
13 the election of presidential electors, the names of the persons who are certified as
14 winners in accordance with s. 5.11, and the governor shall sign, affix the great seal
15 of the state, and transmit the certificate by registered mail to the U.S. administrator
16 of general services. The governor shall also prepare 6 duplicate originals of such
17 certificate and deliver them to one of the presidential electors on or before the first
18 Monday after the 2nd Wednesday in December.

19 SECTION 6. 7.75 (2) of the statutes is amended to read:

20 7.75 (2) The Except as provided in this subsection, the presidential electors,
21 when convened, shall vote by ballot for that person for president and that person for
22 vice president who are, respectively, the candidates of the political party which
23 nominated them under s. 8.18, the candidates whose names appeared on the
24 nomination papers filed under s. 8.20, or the candidate or candidates who filed their
25 names under s. 8.185 (2), except that at least one of the persons for whom the electors

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1 vote may not be an inhabitant of this state. A presidential elector is not required to
 2 vote for a candidate who is deceased at the time of the meeting. If the compact under
 3 s. 5.11 governs the election of presidential electors, the presidential electors shall
 4 vote for the persons for president and vice president who are, respectively, certified
 5 as winners under s. 5.11. ↓

6 **SECTION 7. Effective dates.** This act takes effect on the day after publication,
 7 except as follows:

8 (1) The treatment of sections 7.70 (5) (b) and 7.75 (2) of the statutes, the
 9 renumbering and amendment of section 5.10 of the statutes, and the creation of
 10 section 5.10 (2) of the statutes take effect upon notification by the governor to the
 11 ~~legislative reference bureau~~ ^{legislative reference bureau} that the agreement ratified by this state under section 5.11 of the
 12 statutes, as created by this act, is in effect in this state.

(END)

O-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

-3136/ldn
LRB-0568/1dn

JTK:wjl:aww

Stayd

December 28, 2006

Date

Representative ^{Roys} ~~Boyer~~

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

(LPS) → E-mail? Does e-mail usually go here?

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

LRB-3136/1dn
JTK:wlj:rs

August 12, 2009

Representative Roys:

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

Basford, Sarah

From: McWilliams, Emily
Sent: Friday, February 12, 2010 9:56 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3136/1 Topic: Election of president by popular vote

Please Jacket LRB 09-3136/1 for the ASSEMBLY.