

**NATIONAL POPULAR VOTE**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: \_\_\_\_\_

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**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:

- ▶ 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;
- ▶ provides conditions for the agreement to take effect; and
- ▶ provides certain definitions.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a contingent effective date.

**Utah Code Sections Affected:**

AMENDS:



- 28           **20A-4-105**, as last amended by Laws of Utah 1999, Chapter 56
- 29           **20A-4-306**, as last amended by Laws of Utah 2009, Chapter 202
- 30           **20A-13-301**, as last amended by Laws of Utah 2001, Chapter 78
- 31           **20A-13-302**, as last amended by Laws of Utah 2001, Chapter 78

32 ENACTS:

33           **20A-13-401**, Utah Code Annotated 1953



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

36           Section 1. Section **20A-4-105** is amended to read:

37           **20A-4-105. Standards and requirements for evaluating voter's ballot choices.**

38           (1) Each person counting ballots shall apply the standards and requirements of this  
39 section to resolve any questions that arise as ballots are counted.

40           (2) Except as provided in Subsection (11), if a voter marks more names than there are  
41 persons to be elected to an office, or if for any reason it is impossible to determine the choice  
42 of any voter for any office to be filled, the counter may not count that voter's ballot for that  
43 office.

44           (3) The counter shall count a defective or incomplete mark on any paper ballot if:

45           (a) it is in the proper place; and

46           (b) there is no other mark or cross on the paper ballot indicating the voter's intent to  
47 vote other than as indicated by the defective mark.

48           (4) (a) When the voter has marked the ballot so that it appears that the voter has voted  
49 more than one straight ticket, the election judges may not count any votes for party candidates.

50           (b) The election judges shall count the remainder of the ballot if it is voted correctly.

51           (5) A counter may not reject a ballot marked by the voter because of marks on the  
52 ballot other than those marks allowed by this section unless the extraneous marks on a ballot or  
53 group of ballots show an intent by a person or group to mark their ballots so that their ballots  
54 can be identified.

55           (6) (a) In counting the ballots, the counters shall give full consideration to the intent of  
56 the voter.

57           (b) The counters may not invalidate a ballot because of mechanical and technical  
58 defects in voting or failure on the part of the voter to follow strictly the rules for balloting

59 required by Chapter 3.

60 (7) The counters may not reject a ballot because of any error in:

61 (a) stamping or writing any official endorsement; or

62 (b) delivering the wrong ballots to any polling place.

63 (8) The counter may not count any paper ballot that does not have the official  
64 endorsement by an election officer.

65 (9) If the counter discovers that the name of a candidate voted for is misspelled or that  
66 the initial letters of a candidate's given name are transposed or omitted in part or altogether, the  
67 counter shall count the voter's vote for that candidate if it is apparent that the voter intended to  
68 vote for that candidate.

69 (10) ~~[The]~~ In accordance with Section 20A-13-301, the counter shall count a vote for  
70 the president and the vice president of any political party as a vote for the presidential electors  
71 selected by the political party.

72 (11) In counting the valid write-in votes, if, by casting a valid write-in vote, a voter has  
73 cast more votes for an office than that voter is entitled to vote for that office, the judges shall  
74 count the valid write-in vote as being the obvious intent of the voter.

75 Section 2. Section **20A-4-306** is amended to read:

76 **20A-4-306. Statewide canvass.**

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

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

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

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

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

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

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

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

89 (b) The lieutenant governor, as secretary of the board shall file a report in his office

90 that details:

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

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

93 (B) the candidates for each statewide office whose names appeared on the ballot, plus

94 any recorded write-in candidates;

95 (C) the number of votes from each county cast for each candidate and for and against

96 each ballot proposition;

97 (D) the total number of votes cast statewide for each candidate and for and against each

98 ballot proposition; and

99 (E) the total number of votes cast statewide; and

100 (ii) for each officer or ballot proposition voted on in two or more counties:

101 (A) the name of each of those offices and ballot propositions that appeared on the

102 ballot;

103 (B) the candidates for those offices, plus any recorded write-in candidates;

104 (C) the number of votes from each county cast for each candidate and for and against

105 each ballot proposition; and

106 (D) the total number of votes cast for each candidate and for and against each ballot

107 proposition.

108 (c) The lieutenant governor shall:

109 (i) prepare certificates of election for:

110 (A) each successful candidate; and

111 (B) each of the presidential electors of the candidate for president [~~who received a~~

112 ~~majority of the votes~~] in accordance with Section 20A-13-301;

113 (ii) authenticate each certificate with his seal; and

114 (iii) deliver a certificate of election to:

115 (A) each candidate who had the highest number of votes for each office; and

116 (B) each of the presidential electors of the candidate for president [~~who received a~~

117 ~~majority of the votes~~] in accordance with Section 20A-13-301.

118 (3) If the lieutenant governor has not received election returns from all counties on the

119 fifth day before the day designated for the meeting of the state board of canvassers, the

120 lieutenant governor shall:

121 (a) send a messenger to the clerk of the board of county canvassers of the delinquent  
122 county;

123 (b) instruct the messenger to demand a certified copy of the board of canvasser's report  
124 required by Section 20A-4-304 from the clerk; and

125 (c) pay the messenger the per diem provided by law as compensation.

126 (4) The state board of canvassers may not withhold the declaration of the result or any  
127 certificate of election because of any defect or informality in the returns of any election if the  
128 board can determine from the returns, with reasonable certainty, what office is intended and  
129 who is elected to it.

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

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

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

135 (b) The lieutenant governor shall certify the results of the primary canvass to the  
136 county clerks not later than the August 1 after the primary election.

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

140 (i) canvass the returns; and

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

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

145 Section 3. Section **20A-13-301** is amended to read:

146 **20A-13-301. Presidential electors -- Certification of electors.**

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

150 (b) The person designated as liaison with the lieutenant governor's office shall transmit  
151 to the lieutenant governor the names and addresses of the persons selected by the political party

152 as the party's presidential electors.

153 (2) The [~~highest number of votes~~] national popular vote total calculated as provided by  
154 Subsection 20A-13-401(3)(a) cast for a political party's president and vice president candidates  
155 elects the presidential electors selected by that political party for purposes of Subsection  
156 20A-1-201(2)(a)(i).

157 (3) (a) The lieutenant governor is the presidential elector certifying officer under  
158 Section 20A-13-401.

159 (b) In accordance with Subsections 20A-13-401(3)(b) and (c), the lieutenant governor  
160 shall certify the slate of presidential electors from among the presidential electors selected  
161 under Subsections (1) and (2).

162 Section 4. Section **20A-13-302** is amended to read:

163 **20A-13-302. Certificate of election -- Compliance with national popular vote**  
164 **procedures -- Compensation of electors.**

165 (1) The lieutenant governor shall:

166 (a) transmit certificates of election to each of the electors selected by the political party  
167 whose candidates for president and vice president [~~received the highest number of votes in~~  
168 Utah.] are designated as the national popular vote winner under Subsection 20A-13-401(3);  
169 and

170 (b) ensure the state complies with Section 20A-13-401.

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

172 Section 5. Section **20A-13-401** is enacted to read:

173 **Part 4. Agreement Among the States to Elect the President by National Popular Vote**  
174 **20A-13-401. Agreement among the states to elect the president by national**  
175 **popular vote.**

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

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

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

183 president of the United States.

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

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

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

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

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

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

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

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

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

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

219 (4) Article IV. Other Provisions:

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

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

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

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

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

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

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

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

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

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

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

244 (f) "Presidential slate" shall mean a slate of two persons, the first of whom has been



245 nominated as a candidate for president of the United States and the second of whom has been  
246 nominated as a candidate for vice president of the United States, or any legal successors to such  
247 persons, regardless of whether both names appear on the ballot presented to the voter in a  
248 particular state.

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

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

252 Section 6. **Effective date.**

253 This bill takes effect when states cumulatively possessing a majority of the electoral  
254 votes have enacted the agreement under Section 20A-13-401 in substantially the same form  
255 and the enactments by the states have taken effect in each state. The lieutenant governor shall  
256 inform the Legislature in writing of the date this bill takes effect in accordance with this  
257 section.

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**Legislative Review Note**  
as of 2-22-11 5:27 PM

**Office of Legislative Research and General Counsel**