



State of Wisconsin
2021 - 2022 LEGISLATURE

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2021 ASSEMBLY BILL 246

April 8, 2021 - Introduced by Representatives HEBL, NEUBAUER, ANDERSON, BALDEH, BROSTOFF, GOYKE, HESSELBEIN, HINTZ, HONG, SINICKI, STUBBS, SUBECK and VRUWINK, cosponsored by Senators WIRCH, ROYS, AGARD, CARPENTER, RINGHAND and LARSON. Referred to Committee on Campaigns and Elections.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *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 and vice president of the
4 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 convene and cast their ballots for the candidates of the party who filed their names or for the independent candidates who filed their names.

This bill ratifies an agreement among the states that 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 Elections Commission 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

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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, except that if the compact
8 under s. 5.11 governs the election of presidential electors, the references mean votes
9 for the 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 commission shall determine whether the compact under s. 5.11 governs the
13 election of presidential electors at that election in this state and shall promptly
14 provide a copy of its determination to the legislative reference bureau, and the
15 legislative reference bureau shall publish the determination in the Wisconsin
16 Administrative Register.

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

18 **5.11 Interstate compact on election of president and vice president.**

19 AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY

20 NATIONAL POPULAR VOTE

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1 **(1) ARTICLE I — MEMBERSHIP.** Any state of the United States and the District
2 of 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.** (a) 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 (b) The chief election official of each member state shall designate the
14 presidential slate with the largest national popular vote total as the “national
15 popular vote winner.”

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

19 (d) 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 (e) 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

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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 (f) 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 (g) If, for any reason, the number of presidential electors nominated in a
8 member state in association with the national popular vote winner is less than or
9 greater than that state's number of electoral votes, the presidential candidate on the
10 presidential slate that has been designated as the national popular vote winner shall
11 have the 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 (h) 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.** (a) 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 (b) 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 (c) 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 (d) This agreement shall terminate if the electoral college is abolished.

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

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

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

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

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

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

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

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1 (h) "Statewide popular election" shall mean a general election in which votes
2 are 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 when agreement is in effect.**

5 Whenever the governor notifies the chief executives of the other states that the
6 agreement ratified under s. 5.11 is in effect in this state, or that this state has
7 withdrawn from the agreement, the governor shall concurrently notify the
8 legislative reference bureau that the agreement is in effect or is no longer in effect
9 in this state.

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

11 7.70 (5) (b) For presidential electors, the commission shall prepare a certificate
12 showing the determination of the results of the canvass and the names of the persons
13 elected as presidential electors, or if the compact under s. 5.11 governs the election
14 of presidential electors, the names of the persons who are certified as winners in
15 accordance with s. 5.11, and the governor shall sign, affix the great seal of the state,
16 and transmit the certificate by registered mail to the U.S. administrator of general
17 services. The governor shall also prepare 6 duplicate originals of such certificate and
18 deliver them to one of the presidential electors on or before the first Monday after the
19 2nd Wednesday in December.

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

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

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1 names under s. 8.185 (2), except that at least one of the persons for whom the electors
2 vote may not be an inhabitant of this state. A presidential elector is not required to
3 vote for a candidate who is deceased at the time of the meeting. If the compact under
4 s. 5.11 governs the election of presidential electors, the presidential electors shall
5 vote for the persons for president and vice president who are, respectively, certified
6 as winners under s. 5.11.

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

9 (1) The treatment of ss. 7.70 (5) (b) and 7.75 (2), the renumbering and
10 amendment of s. 5.10, and the creation of s. 5.10 (2) take effect upon notification by
11 the governor to the legislative reference bureau that the agreement ratified by this
12 state under s. 5.11 is in effect in this state.

13 (END)