

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2378**

4
5 (By Delegates Talbott, Caputo and Guthrie)

6 (Originating in the Committee on the Judiciary)

7
8 [February 17, 2011]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §3-13-1, §3-13-2, §3-
12 13-3, §3-13-4, §3-13-5 and §3-13-6 all relating to the
13 implementation of an agreement among the states to elect the
14 President and Vice President by national popular vote; setting
15 forth who may be members to the agreement; establishing the
16 manner of appointing presidential electors in the member
17 states; setting forth the provisions of the agreement that the
18 member states must enact into state law; and setting forth
19 the responsibilities of certain officials.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §3-13-1, §3-13-2, §3-
23 13-3, §3-13-4, §3-13-5 and §3-13-6, to read as follows:

24 **ARTICLE 13. AGREEMENT AMONG THE STATES TO ELECT THE PRESIDENT BY**
25 **NATIONAL VOTE.**

1 §3-13-1. Agreement among the states to elect the President by
2 national popular vote.

3 The agreement among the states to elect the President by
4 national popular vote is enacted into law and entered into with all
5 other jurisdictions legally joining in the agreement in the form
6 substantially as set forth in this article.

7 §3-13-2. Membership.

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

10 §3-13-3. Right of the people in member states to vote for
11 President and Vice President.

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

14 §3-13-4. Manner of appointing presidential electors in member
15 states.

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

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

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

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

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

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

22 (g) If, for any reason, the number of presidential electors
23 nominated in a member state in association with the national
24 popular vote winner is less than or greater than that state's
25 number of electoral votes, the presidential candidate on the
26 presidential slate that has been designated as the national popular

1 vote winner shall have the power to nominate the presidential
2 electors for that state and that state's presidential elector
3 certifying official shall certify the appointment of such nominees.

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

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

11 **§3-13-5. Other provisions.**

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

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

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

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

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

3 **§3-13-6. Definitions.**

4 For purposes of this agreement:

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

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

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

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

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

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

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

26 (8) "Statewide popular election" shall mean a general election

1 in which votes are cast for presidential slates by individual
2 voters and counted on a statewide basis.