

COMMITTEE SUBSTITUTE

FOR

H. B. 2378

(BY DELEGATES TALBOTT, CAPUTO AND GUTHRIE)

(Originating in the Committee on the Judiciary)
[February 17, 2011]

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

§3-13-2. Membership.

1 Any state of the United States and the District of
2 Columbia may become a member of this agreement by
3 enacting this agreement.

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

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

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

1 (a) Prior to the time set by law for the meeting and voting
2 by the presidential electors, the chief election official of each
3 member state shall determine the number of votes for each
4 presidential slate in each state of the United States and in the
5 District of Columbia in which votes have been cast in a
6 statewide popular election and shall add such votes together
7 to produce a “national popular vote total” for each
8 presidential slate.

9 (b) The chief election official of each member state shall
10 designate the presidential slate with the largest national
11 popular vote total as the “national popular vote winner.”

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

16 (d) At least six days before the day fixed by law for the
17 meeting and voting by the presidential electors, each member

18 state shall make a final determination of the number of
19 popular votes cast in the state for each presidential slate and
20 shall communicate an official statement of such
21 determination within twenty-four hours to the chief election
22 official of each other member state.

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

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

35 (g) If, for any reason, the number of presidential electors
36 nominated in a member state in association with the national

37 popular vote winner is less than or greater than that state's
38 number of electoral votes, the presidential candidate on the
39 presidential slate that has been designated as the national
40 popular vote winner shall have the power to nominate the
41 presidential electors for that state and that state's presidential
42 elector certifying official shall certify the appointment of
43 such nominees.

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

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

§3-13-5. Other provisions.

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

5 (b) Any member state may withdraw from this
6 agreement, except that a withdrawal occurring six months or
7 less before the end of a President’s term shall not become
8 effective until a President or Vice President shall have been
9 qualified to serve the next term.

10 (c) The chief executive of each member state shall
11 promptly notify the chief executive of all other states of when
12 this agreement has been enacted and has taken effect in that
13 official’s state, when the state has withdrawn from this
14 agreement, and when this agreement takes effect generally.

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

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

§3-13-6. Definitions.

1 For purposes of this agreement:

2 (1) “Chief executive” shall mean the Governor of a state
3 of the United States or the Mayor of the District of Columbia.

4 (2) “Elector slate” shall mean a slate of candidates who
5 have been nominated in a state for the position of presidential
6 elector in association with a presidential slate.

7 (3) “Chief election official” shall mean the state official
8 or body that is authorized to certify the total number of
9 popular votes for each presidential slate.

10 (4) “Presidential elector” shall mean an elector for
11 President and Vice President of the United States.

12 (5) “Presidential elector certifying official” shall mean
13 the state official or body that is authorized to certify the
14 appointment of the state’s presidential electors.

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

22 (7) “State” shall mean a state of the United States and the
23 District of Columbia.

24 (8) “Statewide popular election” shall mean a general
25 election in which votes are cast for presidential slates by
26 individual voters and counted on a statewide basis.